TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 210.

THE PEORIA AND PEKIN UNION RAILWAY COMPANY, APPELLANT,

vs.

THE CHICAGO, PEKIN AND SOUTHWESTERN RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED MARCH 6, 1885.

Without extending the argument further we respectfully submit that the judgment of the Circuit Court was clearly right.

W. W. BOYNTON & HALE,

Solicitors for Appellee.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 210.

THE PEORIA AND PEKIN UNION RAILWAY COMPANY, APPELLANT,

vs.

THE CHICAGO, PEKIN AND SOUTHWESTERN RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED MARCH 6, 1885.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 210.

THE PEORIA AND PEKIN UNION RAILWAY COMPANY, APPELLANT,

vs.

THE CHICAGO, PEKIN AND SOUTHWESTERN RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Caption	1	1
Intervening petition	2	1
Statement of account, &c.	4	2
Answer	38	21
Exhibit A—Statement of earnings	41	23
B— " mileage, &c.	42	24
Supplemental petition	43	25
Order of reference	45	26
Master's report	47	26
Exceptions of receiver to master's report	52	28
Decree dismissing petition, &c.	54	29
Appeal allowed	55	29
Appeal bond	56	30
Stipulation to abbreviate record	59	31
Certificate of evidence	66	34
Deposition of John B. Cohrs	66	34
Exhibit—Petition of Receiver Sam'l B. Reed	80	40

JUDD & DETWEILER, PRINTERS, WASHINGTON, SEPTEMBER 19, 1887.

	Original.	Print.
Exhibit A—Agreement between the Peoria and Pekin Railway Co., the Indiana, Bloomington and Western Railway Co., the Wabash, St. Louis and Pacific Railway Co., the Peoria and Jacksonville Railroad Co., and the Peoria, Decatur and Evansville Railway Co., ——— —, ——-	84	41
Exhibit B—Memorandum of an agreement between the Pekin, Lincoln and Decatur Railway Co. and the Chicago, Pekin and Southwestern Railroad, March 10, 1879	123	54
Exhibit C—Agreement between Amos Hopkins, receiver, &c., and the Peoria and Pekin Union Railway Co., February 1, 1881	129	56
Deposition of Francis E. Hinckley	137	59
Exhibit A—Agreement between the Peoria and Springfield Railroad Co. and the Chicago, Pekin and Southwestern Railroad Co., January 4, 1876	157	66
Exhibit B—Agreement between the Peoria, Pekin and Jacksonville Railroad Co. and the Chicago, Pekin and Southwestern Railroad Co., September 1, 1877	165	68
Exhibit C—Petition of Receiver Sam'l B. Reed	174	71
Exhibit D—Suggestions for the receiver of the Chicago, Pekin and Southwestern Railroad	178	73
Exhibit E—Tabulated statement of business to and from Peoria, &c.	185	76
Judge's certificate to evidence	186	76
Clerk's certificate	188	77

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in said district, before the Hon. Thomas Drummond, judge of the United States circuit court for the seventh circuit, on Tuesday, the thirteenth day of November, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and eighty-three, and of our Independence the one hundred and eighth year.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

FARMERS' LOAN AND TRUST COMPANY
vs.
CHICAGO, PEKIN AND SOUTHWESTERN RAILROAD COMPANY *et al.* } In Chancery.

Be it remembered that on the fourteenth day of July, A. D. 1881, came The Peoria and Pekin Union Railway Company, by its solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, its petition in said entitled cause, which said petition is in the words and figures following, to wit:

2 *Intervening Petition.*

UNITED STATES OF AMERICA, *Northern District of Illinois:*

In the Circuit Court of the United States for the Northern District of Illinois.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE CHICAGO, PEKIN AND SOUTHWESTERN RAILROAD COMPANY.

In the matter of the claim of the Peoria and Pekin Union Railway Company.

Foreclosure.

To the Hon. Thos. Drummond, judge U. S. circuit court:

Your petitioner, The Peoria and Pekin Union Railway Company, respectively represents that the Chicago, Pekin and Southwestern Railroad Company is justly indebted to your petitioner in the aggregate sum of seven thousand nine hundred and fifty-nine dollars and eighteen cents ($7,959.18) for rental and maintenance of
3 tracks, transferring cars, handling merchandise, and other services and materials furnished at Peoria, Illinois, prior to June 1st, 1881, as is more fully shown by the statements of account and accompanying exhibits hereto attached. Wherefore your peti-oner prays that the receiver of said Chicago, Pekin and Southwestern Railroad Company may be directed to pay said amount to your petitioner out of any funds in his hands applicable to such purpose.

THE PEORIA AND PEKIN UNION RAILWAY COMPANY,
By JEWETT & NORTON, *Its Att'ys.*

4 The Chic., Pekin & So'west'n R'y to the Peoria & Pekin Union Railway Company, Dr.

1881.					
Feb'y 28.	For switching cars for Mo.	Statm't	A		177 00
	" handl'g 182[1187] tons mdse., 20c.*				36 50
	" pro maint'n'c- main track (labor)		B		118 50
	" " do. do. (mat'ls)		"		34 72
	" rental installment for Feb'y				1,875 00
M'ch 31.	" switching cars for March		C		182 25
	" handl'g 218[299] tons mdse., 20c.*				43 63
	" pro mant'n'c- main track (labor)		D		142 96
	" " " (mat'ls)		"		90
	" rental installment of M'ch				1,875 00
Ap'l 30.	" switching cars for April		E		399 50
	" handl'g 211[404] tons mdse. for April, 20c.*				42 44
	" pro maint'n'c- main track (labor)		F		165 93
	" " do. do. (mat'ls)		"		15 58
	" rental installment for April				1,875 00
	" rep's Emp. Line car #3,853, broken by them Ap'l 7th by carelessness of C. P. & S. W. men †				10 39
May 31.	" switching cars for May		G		745 00
	" handl'g 184[1149] tons mdse., 20c.*				36 91
	" pro maint'n'c- main track (labor)	Not ascertained yet, but their prop'n by mileage.			
	" " do. do. (mat'ls)				
	" rental installment for May				1,875 00
	" 150 bu. coal, 8c., supplied their office at Peoria	12 00			
	" 1 switch-lock, broken by their cond'r, Sheehan, May 20th, 1.25†				13 25
					9,664 72

CR.

1881.				
M'ch 30.	By cash on ac., Feb'y	949 50		
" "	do. (handl'g mdse. in Feb'y)	36 50		
May 5.	" do. on ac., M'ch	929 00		
"	do. (handl'g mdse. in M'ch)	43 63		
				1,958 63

1881.

June 1. To balance due P. & P. U. R'y Co. to June 1, '81 ..... $7,706 09

Correct.

EDW'D GALE,
Aud'r P. & P. U. R'y Co.

5 Chic., Pekin & So'west'n R'y (S. B. Reed, rec'r) to the Peoria & Pekin Union Railway Company, Dr.

For your prop'n maint'n'c- of main tracks and joint expenses as shown by P. & P. U. pay-rolls for May, 1881.

On roll #4. J. H. Wynd & others.

Maint'n'c- of bridges :		
1 forem-n P. & S. bridge, 31 d's	45 00	
4 bridgeman @ 1.00, 93 "	93 00	
		138 00
Total, 124 ds.		

* Am'ts as certified by C., P. & S. W'n ag't, Peoria.

† Bills ren'd S. B. Reed, receiver.

Do. #8. Wm. Sheehan & others (sec'n #4).

Low'r Peoria to Hollis:

1 foreman, 31 d's	45 00	
6 laborers @ 1.20, 156½ d's	187 80	
1 track-walker, 1.35, 5 "	6 75	
1 lamp-lighter, 31 d's	5 00	
		244 55

Total, 223½ days.

Do. #9. Martin Powers & others (sec'n #5).

Hollis to Pekin:

1 foreman, 31 d's	45 00	
5 laborers @ 1.20, 122¾ d's	147 30	
1 track-walker, 1.35, 4 d's	5 40	
1 lamp-lighter, 31 d's	6 00	
		203 70

Total, 188¾ d's.

Do. #10. Pat. McGarry & others (sec'n #6).

Pekin to P. & S. br-dge:

1 foreman, 31 d's	40 00	
3 laborers @ 1.20, 71½ d's	85 80	
		125 80

Total, 102½ d's.

Do. #11. Jas. Foley & others (sec'n #7).

Pekin to P. & S. br-dge:

1 foreman, 31 d's	40 00	
3 laborers @ 1.20, 76 d's	91 20	
		131 20

Total, 107 d's.

Do. 23. John Conley & others.

Maint'n'c- br-dges:

1 forem'n Pekin br'dge, 31 d's	68 00	
4 bridgemen @ 1.10, 1.24 "	136 40	
		204 40

Total, 155 d's.

Do. 26. J. C. Hakinson & others.

Joints ag'ts & operators:

1 ch'f despatcher, 31 d's	110 00		
2 ass't do. 62 "	160 00		
2 op'rs reg's off'c-, 62 d's	80 00		
	350 00		
Less ch'd P. & P. U. only	87 50		
		262 50	
6 opr'rs & rep's, 185 d's, 40.00		238 70	
1 op'r for Pekin, 31 "		40 00	
1 " & ag't, Hollis, 31 d's		60 00	
			601 20

Total, 402 d's.

Do. 27 M. C. Purviance & others.

1 for'm- bridge carp't's, 3.00, 26½ d's		79 50	
3 bridge carp'n't's, 2.25, 72 d's		162 00	
3 do. 2.00, 77 "		154 00	
			395 50
Total joint exp'n's on rolls			2,044 35
Your prop'n (12.38 % of $2,044.35) is			$253 09

6 *Statement of Mileage of All Cars on Main Tracks of P. & P. U R'y for Mo. of May*, 1881, *between Lower Peoria & Pekin.*

			Miles.	Pr. ct.
W., St. L. & P. R'y	5,325 cars, Peoria & Hollis	28,930,725		
	Am't April, '81, correct'n added	212,029		
			29,142,754	31.07
I., B. W. R'y	3,323 cars, Peoria, I., B. & W. Junc.	25,105,265		
	Am't Ap'l, '81, correct'n deducted.	1,381,190		
			23,724,075	25.30
P., D. & E. R'y	2,161 cars, Peo. & Pekin	17,303,127		
	Am't Ap'l, correct'n deducted	355,814		
			16,947,313	18.07
P., P. & J. R'y	1,189 cars, Peo. & Pekin	9,520,323		
	2 " Peo. & Sholls	7,954		
	2 " Peo. & Hollis	10,866		
	21 " Sholls & Pekin	84,630		
	13 " Hollis & Pekin	33,462		
		9,657,235		
	Am't Ap'l, 81, correct'n added	647,379		
			10,304,614	10.99
C., P. & S. W. R'y	1,591 cars, Peoria, I., B. & W. Junc.	12,020,005		
	Am't Ap'l, '81, correct'n deducted.	404,720		
			11,615,285	12.38
P. & P. U. R'y	30 cars, Peo. & Colliers (1,988)	59,640		
	9 " Peo. & Sholls (3,977)	35,793		
	4 " Peo. & Hollis (5,433)	21,732		
	150 " Peo. & Wesley City (12,655)	1,898,250		
	13 " do. (2,600)	33,800		
	7 " Pekin & Wesley City (5,300)	37,100		
	9 " Peo. & Pekin (8,007)	72,063		
	2 " Peo. & I., B. & W. Junc. (7,555)	15,110		
	2 " Hollis & I., B. & W. Junc. (2,122)	4,244		
		2,177,732		
	Am't Ap'l, '81, correct'n deducted.	135,545		
			2,042,187	02.19
			93,776,228	100.00

7 *April*, '81.—*Mileage of All Cars on Main Tracks of P. & P. U. R'y. Corrected for May*, '81.

				Miles.
I. B., & W. R. R.:				
We allowed for Ap'l,	3,892 cars,	Peo. to Pekin		31,163
Should have been	3,892 "	Peo. to I. B., & W. Junc.	29,404,060	
St. engines, no ac. of	4 "	do.	30,220	
	46 "	I. B., & W. Junc. to Peo.	347,530	
Am't, Ap'l, should have been				29,781,810
Mil'g- diff. to be deducted in May				1,381,190
W., St. Lo. & P. R'y:				
Ap'l should have been	4,774 cars,	Peo. to Hollis	25,937,142	
Cars we had no ac. of,	39 "	" "	211,887	

Correct am't for Ap'l					26,149,029
We allowed					25,937
Diff. to be added in May, '81					212,029
P., D. & E. R'y Co.:					
We allowed	2,037 cars,	Peo. to Pekin			16,310
Should have been,	2,037 "	do.		16,310,259	
Less engines not on road,	49 "	do.		392,343	
				15,917,916	
Add cars we had no ac. of,	9 "	Sholls to Pekin		36,270	
April, should be					15,954,186
Diff. deducted in May					355,814
P., P. & J. R. R.:					
April, '81, mil'g- should have been					11,693,379
Our figures were					11,046
Diff. to be added in May					647,379
C., P. & S. W. R. R.:					
We allowed 896 cars, Peo. to Pekin					7,174
Should be " " I., B. & W. Junc.					6,769,280
Deducted in May, '81					404,720
P. & P. U. R'y:					
Our April mil'g- was					3,365
Should have been					3,229,455
Deducted in May					135,545

8

PEORIA AND PEKIN UNION RAILWAY CO.,
PEORIA, ILL., *Feb'y* 28, 1881.

Ira W. Gantt, Esq., agent C., P. & S. W. R. R.

DEAR SIR: Attached hereto you will find abstract of cars handled for account of your company during the month of February, 1881, (1st to 28th inclusive), showing totals of —— cars to connecting roads—

494 cars received & for'd.

96 cars—miscellaneous coaches, bagg., & mail.

Please examine abstract and note your approval below, returning all papers at your earliest convenience to,

Yours truly, EDWARD GALE, *Auditor*,
Per J. A. D.

I certify that the Peoria and Pekin Union Railway Company has handled for the C., P. & S. W. R. R. Co., during the above-stated time—

450 load- and empt's rc'd & for'd cars.

86 cars—miscellaneous coach- & bagg.

As shown by attached abstract.

July 7th, 1881.

IRA W. GANTT,
Agent C., P. & S. W. R. R.

[C., P. & S. W. R. R. Ira W. Gantt, agent. Fr't Office, Peoria, Ill., Jul- 7, 1881.]

Address.—

9 Chicago, Pekin & So'western R. R. to Peoria & Pekin R'y Co., Dr.

For transferring cars during the month of Febuary, 1881, as follows:

To connecting roads:

1st quarter, — cars.
2d " "
3d " "
4th " "

Total, — cars @ — per car.

Received and forwarded:

1st quarter, — cars.
2d " "
3d " "
Month, 450 "

Total, 450 cars @ 25c. per car 112 50

Coaches, baggage, & mail cars:

1st quarter, — cars.
2d " "
3d " "
Month, 86 "

Total, 86 cars @ 75c. per car 64 50

$177 00

Correct.

EDW'D GALE, *Auditor.*

Dated ——, 188–.

Received of —— —— the sum of one hundred & seventy — dollars in full of the above amount.

$——.

10 Chic., Pekin and So'w'n R'y to the Peoria & Pekin Union Railway Company, Dr.

1881.

Month 1. For your pro. of P. & P. U. R'y vouc's for mainten'c- of main tracks and other joint expenses for the month of February, '81, as per contract.

February. Vouc. #7—Paid W. St. L. & P. R'y for fr't on links & pins 15 00

Compromised for 7 50

Do. #33—P'd Z. N. Hotchkiss:

1¾ doz. Ames shovels
1 " adzes & handles
1½ " " & pick handles
1 " axles & h'dl's, maul h'dl's } 84 18

Compromised for 56 12

Do. #47—P'd Corerar, Adams & Co., bill of iron & steel for road tools and maint'n'c. of bridges 87 36

Compromised for 65 52

Do. #48—P'd Metcalf, Paul & Co. for 4 doz. track chisels 55 50

Compromised for 37 00

Do. #52—P'd Helmbarker, F. & R. mill:

For 2,691 coupling pins
602 " links } 680 00

Compromised for 340 00

Do. #22—P'd Couch & Heyle:

For 1½ doz. scoops
1 " brooms } 26 25

Compromised for 17 50

$523 64

Your pro. (663 % of $523.64) is $34 72

11 *Corrected Bill.*

Chic., Pekin & So'west'n R'y to the Peoria & Pekin Union Railway Company, Dr.

For your prop'n of maintenance and joint expenses as shown by P. & P. U. pay-rolls for February, '81.

On roll #5. M. C. Purviance & others.

Maint'n'c- of bridges:

1 forem'n bridg- carp'nt'rs, 24¼ d's	63 38	
4 bridge carp'nt'rs, 58½ d's	131 62	
1 P. & S. br'dg- form-, 28 d's	45 00	
1 Pekin " do. 28 "	60 00	
4 bridgemen, ea. 28 d's	112 00	
		412 00

Total, 251 days.

Do. #7. Rich'd Boyle & others (r'd-master's sal'y 100 only).

Am't ch'g'd as per agreement 50 00

Total, 28 days.

Do. #8. H. Brennan & others.

Sec. #4. Low. Peo. to Hollis:

1 foreman, 28 d's	45 00	
7 laborers, @ 1.20, 157½ d's	188 70	
2 lamp-lighters, 5.6 d's	15 00	
1 track-walker, 1.20, 32 d's	38 40	
		287 10

Total, 273½ d's.

Do. #9. M. Powers & others.

Sec. #5, Hollis to Pekin:

1 foreman, 23 d's	34 50	
10 laborers (1.20), 108 d's	129 60	
1 lamp-lighter, 28 d's	6 00	
1 track-walker (1.29⅓), 23 d's	29 85	
		199 95

Total, 182 d's.

Do. #10. Pat. McGuire & others (sec'ns 6 and 7).

Pekin to P. & S. br'dg-:

2 foreman, ea. 28 d's	80 00	
7 laborers (1.20), 164½ d's	197 40	
		277 40

Total, 220½ d's.

Do. #13. D. Vetters & others.

Repairs of road tools:

2 blacksmiths (2.86½), 18 d's	51 50	
2 helpers (1.56), 12 d's	18 70	
Am't ch'g'd per agreement		25 00

30 days.

Do. #14. J. C. Hankinson & others.

Joint ag'ts & operators:

1 ch'f despatcher (28 d's)	110 00	
2 ass't do. (56)	160 00	
2 oper's reg. offi'e (56)	80 00	

	350 00		
Less P. & P. U. only	87 50		
		262 50	
6 operators & rep'r (139 d's)		193 33	
1 op'r & ag't, Hollis (28 d's)		60 00	
" Pekin (28 d's)		20 00	
			535 83
			1,787 28

Total, 335 days.
Total roll, 959.33.

Your pro. (.0663% of 1,787.28) is $118 50

12 Peoria & Pekin Union Railway Company.

Edward Gale, secretary and treasurer.

PEORIA, ILL., —— 188–.

Statement of mileage of all cars on the Peoria and Pekin Union R'y main tracks (Lower Peoria to Pekin) for month of February, 1881.

	Mileage.	*Prop'n.*
Wabash, St. Louis & Pacific R'y	24,209	.2926 %
Ind., Bloom. & West'n R'y	23,401	.2828 "
Peo., Decatur & Evans R'y	17,792	.2150 "
Peo., Pekin & Jack'n R'y	9,738	.1177 "
Chic., Pekin & So. West'n R'y	5,488	.0663 "
Peo. & Pekin Union R'y	2,118	.0256 "
	82,746	100.00

13 PEORIA AND PEKIN UNION RAILWAY CO.,
PEORIA, ILL., *March* 7, 1881.

Ira W. Gantt, Esq., agent C., P. & S. W. R. R.

DEAR SIR: Attached hereto you will find abstract of cars handled for account of your company during the 1st quarter of March, 1881 (1 to 7, inclusive), showing totals of 3 cars to connecting roads—

33 cars received & forwarded.
8 cars—miscellaneous coaches, & bagg. cars.

Please examine abstract and note your approval below, returning all papers at your earliest convenience to,

Yours truly, EDWARD GALE, *Auditor*,
Per J. A. D.

I certify that the Peoria and Pekin Union Railway Company has handled for the — R. R. Co., during the above-stated time—

3 cars to connecting roads.
33 cars received and forwarded.
8 cars—miscellaneous, as shown by attached abstract.
Peoria, 4, 19, 1881.

IRA W. GANTT,
Agent C., P. & S. W. R. R.

14 PEORIA AND PEKIN UNION RAILWAY CO.,
PEORIA, ILL., *M'ch* 15, 1881.

Ira W. Gantt, Esq., agent C., P. & S. W. R. R.

DEAR SIR: Attached hereto you will find abstract of cars handled for account of your company during the 2 quarter of March, 188– (8 to 15, inclusive), showing totals of 25 cars to connecting roads—

165 cars received & forwarded.
26 cars—miscellaneous coaches & baggage cars.

Please examine abstract and note your approval below, returning all papers at your earliest convenience to,

Yours truly, EDWARD GALE, *Auditor*,
Per J. A. D.

I certify that the Peoria and Pekin Union Railway Company has handled for the — R. R. Co. during the above-stated time—
24 cars to connecting roads.
142 cars rec'd and for'd.
26 cars—miscellaneous coaches, bagg., and mail cars, as shown by attached abstract.
Peoria, 4, 19, 1881.

IRA W. GANTT,
Agent C., P. & S. W. R. R.

15 PEORIA AND PEKIN UNION RAILWAY CO.,
PEORIA, ILL., *M'ch* 23*d*, 1881.

Ira W. Gantt, Esq., agent C., P. & S. W. R. R.

DEAR SIR: Attached hereto you will find abstract of cars handled for account of your company during the 3 quarter of March, 188– (16 to 23, inclusive), showing totals of 6 cars to connecting roads—
101 cars rec'd & for'd.
12 cars—miscellaneous coaches & baggage cars.

Please examine abstract and note your approval below, returning all papers at your earliest convenience to,

Yours truly, EDWARD GALE, *Auditor*,
Per J. A. D.

I certify that the Peoria and Pekin Union Railway Company has handled for the — R. R. Co. during the above-stated time—
6 cars to connecting roads.
101 cars—elevator, freight, and stock yards.
12 cars, miscellaneous.
As shown by attached abstract.
Peoria, 4, 19, 1881.

IRA W. GANTT,
Agent C., P. & S. W. R. R.

16 PEORIA AND PEKIN UNION RAILWAY CO.,
PEORIA, ILL., *M'ch* 31, 1881.

I. W. Gantt, Esq., agent C, P. & S. W. R. R.

DEAR SIR: Attached hereto you will find abstract of cars handled

for account of your company during the 4 quarter of March, 188– (24 to 31, inclusive), showing totals of 7 cars to connecting roads—
183 cars rec'd & for'd.
28 cars—miscellaneous coaches, bagg., & mail cars.
Please examine abstract and note your approval below, returning all papers at your earliest convenience to,

Yours truly, EDWARD GALE, *Auditor*,
Per J. A. D.

I certify that the Peoria and Pekin Union Railway Company has handled for the C., P. & S. W. R. R. Co. during the above-stated time—
7 cars to connecting roads.
183 cars rec'd & for'd.
28 cars, miscellaneous.
As shown by attached abstract.
April 18, 1881.

IRA W. GANTT,
Agent C., P. & S. W. R. R.

[C., P. & S. W. R. R. Ira W. Gantt, agent. Fr't office, Peoria, Ill., Apr. 28, 1881.]

17 Address: S. B. Reed, Esqr., rec'v'r, Joliet.

Chicago, Pekin & So'western R'y to Peoria & Pekin Union R'y Co., Dr.

For transferring cars during month of March, 1881, as follows:

To connecting roads:

1st	quarter,	3	cars.
2d	"	24	"
3d	"	6	"
4th	"	7	"

Total, 40 cars, @ 30 per car ---------- 12 00

Received and forwarded:

1st	quarter,	33	cars.
2d	"	142	"
3d	"	101	"
4th	"	183	"

Total, 459 cars, @ .25 per car ---------- 114 75

Miscellaneous, coaches, baggage, & mail:

1st	quarter,	8	cars.
2d	"	26	"
3d	"	12	"
4th	"	28	"

Total, 74 cars, @ .75 per car ---------- 55 50

182 25

Correct. EDW'D GALE, *Auditor.*

Dated Peoria, Ap'l 29, 1881.

Received the sum of one hundred eighty-two & $\frac{25}{100}$ dollars in full of the amount.
$182.25.

18 Chic., Pekin & So'west'n R'y to the Peoria & Pekin Union Railway Company, Dr.

For your prop'n of maintenance and joint expenses as shown by P. & P. U. R'y pay-roll for March, 1881.

On roll #13. J. C. Hankinson & others.

Joint ag'ts & operators:

1 ch'f despatchers (31 d's)	110 00		
2 ass't do. (58)	151 35		
2 op'rs reg. offc. (62)	80 00		
	341 35		
Less ch'g'd P. & P. U., only	85 34		
		256 01	
6 operators & repr., 184 d's		240 05	
1 operator & ag't Hollis, 31 d's		60 00	
1 do. Pekin, 31 d's		35 45	
			591 51

Total, 397 days.

Do. #19. J. H. Wynd & others.

Maint'nc- of bridges:

1 P. & S. br'dg- form'n, 31 d's	45 00	
1 Pekin do. 31 "	60 00	
6 bridgemen, 184, d's	182 00	
		287 00

Total, 246 d's.

Do. #20. Pat McGarry & others (sect'ns 6 and 7).

Pekin to P. & S. bridge:

2 foremen, 62 d's	80 00	
8 laborers, @ 1.20, 209½ d's	251 40	
		331 40

Total, 271½ days.

Do. #21. Martin Powers & others (sect'n 5).

Hollis to Pekin:

1 foreman, 31 d's	45 00	
1 track-walker, 32 d's	43 05	
5 laborers, 150½ "	180 60	
1 lamp-lighter, 31 "	6 00	
		274 65

Total, 244½ d's.

Do. #22. Wm. Sheehan & others (sec. 4).

Lower Peoria to Hollis:

1 foreman, 31 d's	45 00	
6 laborers (1.20 & 1.35), 168½ d's	203 85	
1 track-walker, 31 "	41 40	
1 lamp-lighter, 31 "	5 00	
		295 25

Total, 261½ d's.

Do. #25. Rich'd Bohle & others.

Road-mast'r's sal'y, 100 only.
Am't ch'g'd joint pr. agreement 50 00
Total, 31 d's.

Do. #26. M. C. Purviance & others.

Maint'n'c- of bridges:

1 form. br'dg- carp'nt's, 28 d's	84 00	
4 bridge carp'nt's (2.25), 99½ d's	223 85	
2 do. (2.20), 36 "	72 00	
		379 85

Total, 163½ d's.

Total joint exp'n's on rolls $2,209 66

Your prop'n (06.47% of 2,209.66) is $142 96

19 Chic., Pekin & So'west'n R'y to the Peoria & Pekin Union Railway Company, Dr.

For your prop'n of maintenance and joint expenses as shown by P. & P. U. R'y vouchers for the month of March, 1881.

March.

Vouc. No. 30. Paid Cummings & Emerson, Peoria—		
4 b'dl's $\frac{7}{8}$ r'd iron, 413lb, $2\frac{6}{10}$	10 74	
1 " $\frac{7}{8}$ s'g'r do. 122lb, $2\frac{7}{10}$	3 29	
		$14 03

Used in rep's of P. & S. bridge, Peoria.
Your prop'n (.0647 % of 14.03) is 90c.

20 Peoria & Pekin Union Railway Company.

Edward Gale, secretary and treasurer.

PEORIA, ILL., ——, 188–.

Statement of mileage of all cars on the Peoria and Pekin Union R'y main tracks (Lower Peoria to Pekin) for the month of March, 1881.

	Mileage.	*Prop'ns.*
Wabash, St. Louis & Pacific R'y	25,480	27.76
Ind'a, Bloom. & West'n R'y	33,269	36.24
Peoria, Decatur & Evans. R'y	16,070	17.51
Peoria, Pekin & Jack'n R'y	10,477	11.41
Chic., Pekin & So'west'n R'y	5,941	06.47
Peoria & Pekin Union R'y	563	00.61
	91,800	100.00

21 PEORIA AND PEKIN UNION RAILWAY CO.,
PEORIA, ILL., *April* 7, 1881.

Ira W. Gantt, Esq., agent C., P. & S. W. R. R.

DEAR SIR: Attached hereto you will find abstract of cars handled for account of your company during the first quarter of April, 18— (1 to 7, inclusive), showing totals of—

9 cars to connecting roads.
114 cars rec'd & forwarded.
24 cars—miscellaneous coaches, bagg., & mail.

Please examine abstract and note your approval below, returning all papers at your earliest convenience to,

Yours truly, EDWARD GALE, *Auditor*,
Per —— ——.

I certify that the Peoria and Pekin Union Railway Company has handled for the C., P. & S. W. R. R. Co. during the above-stated time—

9 cars to connecting roads.
114 cars rec'd & for'd.
24 cars—miscellaneous coaches, bagg. & mail.
1 sundry.
As shown by attached abstract.
Peoria, 5, 5, 1881.

IRA W. GANTT,
Agent C., P. & S. W. R. R.

[C., P. & S. W. R. R. Ira W. Gantt, agent. Fr't office, Peoria, Ill., May 5, 1881.]

22 PEORIA AND PEKIN UNION RAILWAY CO.,
PEORIA, ILL., *April* 15, 1881.

Ira W. Gantt, Esq., agent C., P. & S. W. R. R.

DEAR SIR: Attached hereto you will find abstract of cars handled for account of your company during the 2 quarter of April, 188–, (8 to 15, inclusive), showing totals of—

20 cars to connecting roads.
149 cars received & forwarded.
29 cars—miscellaneous coaches, mail, & bagg. cars.

Please examine abstract and note your approval below, returning all papers at your earliest convenience to,

Yours truly, EDWARD GALE, *Auditor*,
Per J. A. D.

I certify that the Peoria and Pekin Union Railway Company has handled for the C., P. & S. W. R. R. Co. during the above-stated time—

20 cars to connecting roads.
149 cars rec'd & for'd.
28 cars—miscellaneous coaches, bagg. &. mail.
As shown by attached abstract.
May 21, 1881.

IRA W. GANTT,
Agent C., P. & S. W. R. R.

[C., P. & S. W. R. R. Ira W. Gantt, agent. Fr't office, Peoria, Ill., May 21, 1881.]

23 PEORIA AND PEKIN UNION RAILWAY CO.,
PEORIA, ILL., *May* 1, 1881.

Ira W. Gantt, Esq., agent C., P. & S. W. R. R.

DEAR SIR: Attached hereto you will find abstract of cars handled for account of your company during the 3d quarter of April, 188–, (16 to 23, inclusive), showing totals of cars to—

254 cars received and forwarded.
28 cars—miscellaneous coaches, bagg., & mail cars.

Please examine abstract and note your approval below, returning all papers at your earliest convenience to,

Yours truly, EDWARD GALES, *Auditor*,
Per J. A. D.

I certify that the Peoria & Pekin Union Railway Company has

handled for the C., P. & S. W. R. R. Co. during the above-stated time 8 cars to—

254 cars rec'd & forwarded.
28 cars—miscellaneous coaches, bagg., & mail.
As shown by attached abstract.
June 6, 1881.

IRA W. GANTT,
Agent C., P. & S. W. R. R.

[C., P. & S. W. R. R. Ira W. Gantt, agent. Fr't office, Peoria, Ill., Jun- 6, 1881.]

24 PEORIA AND PEKIN UNION RAILWAY CO.,
PEORIA, ILL., *April* 30, 1881.

Ira W. Gantt, Esq., agent C., P. & S. W. R. R.

DEAR SIR: Attached hereto you will find abstract of cars handled for account of your company during the 4 quarter of April, 1881, (24 to 30, inclusive), showing totals of—

2 cars to, empties, D. H.
111 cars received & forwarded.
24 cars—miscellaneous coaches, bagg., & mail.
10 " to and from non-union roads.

Please examine abstract and note your approval below, returning all papers at your earliest convenience to,

Yours truly, EDWARD GALE, *Auditor*,
Per J. A. D.

I certify that the Peoria and Pekin Union Railway Company has handled for the C., P. & S. W. R. R. Co. during the above-stated time 9 cars to—

111 cars rec'd & for'd.
24 cars—miscellaneous coaches, baggace, & mail.
As shown by attached abstract.
June 6, 1881.

IRA W. GANTT,
Agent C., P. & S. W. R. R.

[C., P. & S. W. R. R. Ira W. Gantt, agent. Fr't office, Peoria, Ill.. June 6, 1881.]

25 No. 68.

C., P. & S. W. R'y to the Peoria & Pekin Union Railway Co.. Dr.

1881.

Ap'l 7. Switching 3,634 C. & A., C., P. & S. W. to store, ac. P. C. Wheeler---------- 1 00

O. K.

IRA W. GANTT, *Agent.*

[C., P. & S. W. R. R. Ira W. Gantt, agent. Fr't office, Peoria, Ill., May 5, 1881.]

26 C., P. & S. W. R. R. to the Peoria & Pekin Union Railway Co., Dr.

1881.

Apr'l 25. Switching 3,932 C. & A. to bl'k 5, Water St., ac. P. C. Wheeler ---------- 1 00

" 29. 369 S. W., Water St., to C., P. S. W., ac. P. C. Wheeler ---------- 1 00

2 00

O. K.

IRA W. GANTT.

[C., P. & S. W. R. R. Ira W. Gantt, agent. Fr't office, Peoria, Ill., Jun- 6, 1881.]

27 Address—

Chicago, Pekin & So'western R'y to Peoria & Pekin Union R'y Co., Dr.

For transferring cars during month of April, 1881, as follows:

To coaches, baggage, & mail cars:

1st quarter, 24 cars.
2d " 28 "
3d " 28 "
4th " 24 "

Total, 104 cars, @ 75c. per car ---------- 78 00

Received and forwarded:

1st quarter, 123 cars,
2d " 149 "
3d " 254 "
4th " 111 "

Total, 637 cars, @ 50c. per car ---------- 318 50

Miscellaneous:

1st quarter, 1 cars, Sunday.
2d " "
3d " "
4th " 2 "

Total, 3 cars, @ 1.00 per car ---------- 3 00

399 50

Correct.

EDW'D GALE, *Auditor.*

Dated, ——, 188–.

Received of —— —— the sum of —— dollars in full of the above amount.
$——.

28 Chic., Pekin & So'west'n R'y to the Peoria & Pekin Union Railway Company, Dr.

For your prop'n of maintenance and joint expenses, as shown by P. & P. U. R'y pay-rolls for April, 1881.

On roll #1. Rich'd Boyle & others.

Road-master's sal'y $100 only.
Am't ch'g'd per agreement ---------- 50 00
Total, 31 days.

Do. #4. Wm. Sheehan & others (sec'n 4).

Lower Peoria to Hollis:

1 foreman, 30 d's	45 00	
6 labor's @ (1.20), 138½ d's	166 20	
1 track-walker, 1.25, 31 d's	41 85	
1 lamp-lighter, 30 d's	5 00	
		258 05

Total, 229½ d's.

Do. #5. Martin Powers & others (sec'n 5).

Hollis to Pekin:

1 foreman, 30 d's	45 00	
1 track-walker (1.20 & 1.35), 35½ d's	47 10	
5 laborers, @ 1.20, 120 d's	144 00	
1 lamp-lighter, 30 d's	6 00	
1 foreman, 5 d's	8 00	
		250 10

Total, 220½ d's.

Do. #6. Pat. McGarry & others (sec'ns 6 and 7).

Pekin to P. & S. bridge:

2 foreman, 60 d's	80 00	
7 laborers, @ 1.20, 182 d's	218 40	
		298 40

Total, 242 d's.

Do. #7. M. C. Purviance & others.

Maint'n'c- of bridges:

1 forem. bridg- carp'nt's, 27 d's	81 00	
4 bridg- carpent's, 2.25, 86½ d's	194 65	
3 do. 2.00, 63 d's	126 00	
1 P. & S. bridge for'm., 30 "	45 00	
1 Pekin do. 30 "	60 00	
7 bridgemen (1.00, 1.10), 210 d's	222 00	
		728 65

Total, 446½ d's.

Do. #10. J. C. Hankinson & others.

Joint ag'ts & operators:

1 ch'f despatcher, 30 d's	110 00		
2 ass't. do. 60 "	160 00		
2 op'rs reg's off'c-, 60 "	80 00		
	350 00		
Less ch'g'd P. & P. U., only	87 50		
		262 50	
6 op'rs & rep'rs, 180 d's, 40.00		240 00	
1 operator & ag't, Pekin, 30 d's		40 00	
1 do. Hollis, 30 d's		60 00	
			602 50
Total, 390 d's.			
Total joint expenses on rolls			2,187 70
Your prop'n (07.56 % of $2,187.70) is			$165 39

29 Chic., Pekin & So'west'n R'y to the Peoria & Pekin Union Railway Company, Dr.

For your prop'n of maintenance and joint expenses as shown by P. & P. U. R'y vouchers for supplies in month of April, 1881.

April vouc. No. 14. Paid Rogers & Bennian, Peoria.

6,000 f't 4-6—12, oak lumber, 23	138 00

	Used on long trestle No. — of Pekin br'dg:		
	480 ft. 2—12-12—20, 20	9 60	
	288 " 12— 2-12—12, 15	4 32	
	Used on first bridge so. of Hollis:		
	840 ft. 5—12 × 12 × 14 } 1,800, 18.00	32 40	
	960 " 6—10 × 12 × 16 }		
	96 " 2— 6 × 8 × 12. "	1 73	
			186 05
April vouc. No. 16.	Paid Mosher & Armstrong, Peoria.		
	Labor & matl's, noz-le for round-house, useed at r'd-house jointly		4 30
April vouc. No. 18.	Paid P. & P. J. R'y Co.		
	4 pads paper, 36; 25 carbons, 37; 18 manifolds, 1.17	1 90	
	Used at Hollis stat'n:		
	12 manifolds, 78; 24 carbons, 36	1 14	
	Used at Lower Register offc.:		
	10 manifolds, 65; 20 carbons, 30; pens, 10	1 05	
	2 pads paper, 18; 100 note heads, 18; pen-holder, 3	39	
	2 pencils, 3; 50 envelopes, 6	09	
	Used at I., B. & U. Junct'n:		
	10 gals. h'dlight oil, 22c.	2 20	
	Used at Hollis for snc. lamps:		
	1 train register	96	
	Used at lower register offic.		7 73
April vouc. No. 26.	Paid Hamilton & Carter, Hollis.		
	Used at Hollis depot:		
	63 bu. coal (in Feb. & M'ch), 6½		4 05
April vouc. No. 29.	Paid Ira Smith & Son.		
	224 ft. 12-14—16, lumber, 18		4 03
	Used on long trestle No. —, of Pekin		$206 16
	Your prop'n (07.56% of 206.16) is		$15 58

30 Peoria & Pekin Union Railway Company.

Edward Gale, secretary and treasurer.

PEORIA, ILL., —— 188-.

Statement of mileage of all cars on the Peoria and Pekin Union R'y main tracks (Lower Peoria to Pekin) for the month of April, 1881.

	Mileage.	*Prop'n.*
Ind., Bloom & W'n R'y	38,163	32.80%
Wab., St. L. & P'f'c R'y	25,937	27.30 "
Peoria, Dec'r & Evansv. R'y	16,310	17.17 "
Peo., Pekin & Jack'v. R'y	11,046	11.63 "
Chic., Pek'n & So'w'n R'y	7,174	07.56 "
Peo. and Pek'n U'n R'y	3,365	03.54 "
	94,995	100.00

31 PEORIA AND PEKIN UNION RAILWAY CO.,
PEORIA, ILL., *May* 7, 1881.

Ira W. Gantt, Esq., agent C., P. & S. W. R. R.

DEAR SIR: Attached hereto you will find abstract of cars handled for account of your company during the 1st quarter of May, 188– (1 to 7, inclusive) showing totals of—

8 cars to & from connecting roads.
85 cars rec'd & for'd.
24 cars—miscellaneous coaches, bagg., & mail.

Please examine abstract and not- your approval below, returning all papers at your earliest convenience to,

Yours truly, EDWARD GALE, *Auditor*,
Per J. A. D.

I certify that the Peoria and Pekin Union Railway Company has handled for the C., P. & S. W. R. R. Co. during the above-stated time—

8 cars to connecting roads.
85 cars.
24 cars, miscellaneous.
As shown by attached abstract.
June 6, 1881.

IRA W. GANTT,
Agent C., P. & S. W. R. R.

[C., P. & S. W. R. R. Ira W. Gantt, agent. Fr't office, Peoria, Ill., Jun- 6, 1881.]

32 PEORIA AND PEKIN UNION RAILWAY CO.,
PEORIA, ILL., *June* 8, 1881.

I. W. Gantt, Esq., agent C., P. & S. W. R. R.

DEAR SIR: Attached hereto you will find abstract of cars handled for account of your company during the 2d quarter of May, 1881 (8 to 15, inclusive), showing totals of—

24 cars to coaches, bagg., & mail.
366 cars received & for'd
— cars, miscellaneous.

Please examine abstract and note your approval below, returning all papers at your earliest convenience to,

Yours truly, EDWARD GALE, *Auditor*,
Per J. A. D.

I certify that the Peoria and Pekin Union Railway Company has handled for the C., P. & S. W. R. R. Co. during the above-stated time—

24 cars to coach, bagg., & mail.
365 cars received & for'd.
— cars, miscellaneous.
As shown by attached abstract.
June 14, 1881.

IRA W. GANTT,
Agent C., P. & S. W. R. R.

[C., P. & S. W. R. R. Ira W. Gantt, agent. Fr't office, Peoria, Ill., Jun- 14, 1881.]

33 PEORIA AND PEKIN UNION RAILWAY CO.,
PEORIA, ILL, *June* 14, 1881.

Ira W. Gantt, Esq., agent C., P. & S. W. R. R.

DEAR SIR: Attached hereto you will find abstract of cars handled for account of your company during the 3d quarter of May, 1881 (16 to 23, inclusive), showing totals of—

28 cars—coaches, bagg., & mail.
522 cars received & for'd.
1 cars, miscellaneous.

Please examine abstract and note your approval below, returning all papers at your earliest convenience to,

Yours truly, EDWARD GALE, *Auditor*,
Per J. A. D.

I certify that the Peoria and Pekin Union Railway Company has handled for the C., P. & S. W. R. R. Co. during the above-stated time—

28 cars—coaches, bagg., & mail.
522 cars rec'd and for'd.
1 cars, miscellaneous.
As shown by attached abstract.
June 15, 1881.

IRA W. GANTT,
Agent C., P. & S. W. R. R.

[C., P. & S. W. R. R. Ira W. Gantt, agent. Fr't office, Peoria, Ill., Jun- 15, 1881.]

34 To the Peoria & Pekin Union Railway Co., Dr.

1881. MAY 23.

May 16. Switching 3,380 C. & A., C., P. & S. W. to Wt. St., b'lk 5 ---------- 1 00

35 PEORIA AND PEKIN UNION RAILWAY CO.,
PEORIA, ILL., *June* 24, 1881.

Ira W. Gantt, Esq., agent C., P. & S. W. R. R.

DEAR SIR: Attached hereto you will find abstract of cars handled for account of your company during the 4th quarter of May, 1881 (24 to 31, inclusive), showing totals of—

28 cars—coaches, bagg., & mail.
357 cars rec'd & forwarded.
1 cars, miscellaneous, @ $1.50.

Please examine abstract and note your approval below, returning all papers at your earliest convenience to,

Yours truly, EDWARD GALE, *Auditor*,
Per J. A. D.

I certify that the Peoria and Pekin Union Railway Company has handled for the C., P. & S. W. R. R. Co. during the above-stated time—

28 cars—coaches, bagg., & mail.

357 cars rec'd & for'd.
1 cars, miscellaneous.
As shown by attached abstract.
June 21, 1881.

IRA W. GANTT,
Agent C., P. & S. W. R. R.

[C., P. & S. W. R. R. Ira W. Gantt, agent. Fr't office, Peoria, Ill., June 21, 1881.]

36 Chicago, Pekin & So'western R'y to the Peoria & Pekin Union Railway Co., Dr.

MAY 31.

1881.

May 30. Switching trans. B. L. 7,885 unto C., B. & Q., 2731 $1 50

Duplicate. O. K.

IRA W. GANTT.

[C., P. & S. W. R. R. Ira W. Gantt, agent. Fr't office, Peoria, Ill., Jun- 21, 1881.]

37 Address—

Chicago, Pekin & So'western R. R. to Peoria & Pekin Union R'y Co., Dr.

For transferring cars during month of May, 1881, as follows:

Coaches, baggage, & mail:

1st quarter,	24	cars.	
2d "	24	"	
3d "	28	"	
4th "	28	"	
Total,	104	cars, 75c. per car	78 00

Received and forwarded:

1st quarter,	85	cars.	
2d "	365	"	
3d "	522	"	
4th "	357	"	
Total,	1,329	cars, @ 50c. per car	664 50

Miscellaneous:

1st quarter,	—	cars.	
2d "	—	"	
3d "	1	sundry, @ $1.00	2 50
4th "	1	sundry cars, @ 1.50 per car; total	
			745 00

Correct.

EDW'D GALE, *Auditor.*

Dated June 27th, 1881.

Received of —— —— the sum of seven hundred and forty-five dollars in full of the above amount.
$745.00.

Endorsed: Filed this 14th day of July, 1881. Wm. H. Bradley, clerk.

38 Afterwards, to wit, on the fifth day of September, A. D. 1881, came the Chicago, Pekin and Southwestern Railroad Company, by its solicitor, and filed in said clerk's office its answer in said entitled cause; which said answer is in the words and figures following, to wit:

Answer.

United States Circuit Court, Northern District of Illinois.

FARMERS' LOAN & TRUST COMPANY

vs.

THE CHICAGO, PEKIN & SOUTHWEST'N RAILROAD COMPANY.

In the matter of the intervening petition of the Peoria and Pekin Union Railway Company we beg leave to submit the following statements:

The Peoria & Pekin Union Railway Company own a line of railway from Pekin to Peoria, Ills., with certain track and terminal facilities in Peoria, which line of road and tracks and terminal facilities are occupied jointly by six railway companies.

It is proposed on the part of the said Peoria & Pekin Union Railway Company to charge each of said railways an arbitrary rental of $1,875.00 per month, or $22,500.00 per annum, regardless of the amount of business done by each road.

39 We submit to the court that this is not fair; that a road doing a small amount of business ought not to pay the same for its terminal facilities as a road doing a large amount of business, and submit that a payment per car on the amount of business done is equitable and fair between the parties.

The Chicago, Pekin & Southwestern road has done business into Peoria over the tracks now owned by the Peoria & Pekin Union Railway Company for many years on the basis of paying per car, and at the time of the Peoria & Pekin Union consolidation the said Chicago, Pekin & Southwestern road was paying to the Peoria & Springfield road (which was the former name) two and $\frac{50}{100}$ dollars ($2.50) per car for this service, and it claims the right to continue to do business into Peoria at the same rate, and has paid to the Peoria & Pekin Union Railway Co. at this rate for the months of February and March and is willing to continue to do so.

Even this rate gives the Peoria & Pekin Union Railway Co. much more than a prorate of the business. We submit herewith a statement, marked "Exhibit A," of the earnings derived from business done into Peoria by the Chicago, Pekin & Southwest'n road for the months of February, March, and April, which shows the gross amount

earned between Joliet and Peoria, the number of cars handled, and the earnings prorated belonging to each road.

40 An examination of which statement will show that even the price offered to be paid by the Chicago, Pekin and Southwestern road to the Peoria and Pekin Union Railway Co. is about three times a prorate.

The price tendered by the Chicago, Pekin & Southwestern road is equal to about one-fourth ($\frac{1}{4}$) of the entire earnings between Joliet and Peoria, while the distance would give the Peoria and Pekin Union railway about one-twelfth ($\frac{1}{12}$).

We also submit herewith a tabulated statement showing the proportion of business done by each line using the tracks of the Peoria & Pekin Union Railway Co. for the months of February, March, and April, "Exhibit B." These statements are taken from the exhibits attached to the petition of said interveners.

GEO. W. COTHRAN,
Att'y for C., P. & S. W. R. R. Co.

41 "EXHIBIT A."

Statement of Earnings from Business between Joliet and Peoria Passing over the Entire Line of the Chicago, Pekin & Southwestern Railroad, and Over the Entire Distance of the Peoria & Pekin Union Road—Total Distance, 124 Miles—Showing Proportion Due each Road.

		No. of cars.	
1881.			
February.	From Peoria—		
	Through eastern freight	90	1,145 16
	Local freight	26	308 72
	Merchandise	------	570 48
	To Peoria—		
	Local freight	105	1,150 45
	Merchandise	------	197 76
	Passenger earnings to & from Peoria	------	238 14
	Total	221	3,610 71
	Proportion of C., P. & S. W. (114 miles)	------	3,319 51
	" " P. & P. U (10 ")	------	291 20
March.	From Peoria—		
	Trough eastern freight	103	1,323 57
	Local freight	31	410 68
	Merchandise	------	618 92
	To Peoria—		
	Local freight	161	1,821 86
	Merchandise	------	266 29
	Passenger earnings to & from Peoria	------	238 14
	Total	295	4,679 46
	Prop'n of C., P. & S. W. (114 m.)	------	4,302 08
	" " P. & P. U. (10 ")	------	377 38
April.	From Peoria—		
	Through eastern freight	168	1,482 02
	Local freight	28	360 50
	Merchandise	------	673 39
	To Peoria—		
	Local freight	90	1,023 52
	Merchandise	------	279 15
	Passenger earnings to & from Peoria	------	238 14
	Total	286	4,056 72
	Prop'n of C., P. & S. W. (114 m.)	------	3,729 57
	" " P. & P. U. (10 ")	------	327 15

Summary.

Month.	Cars.	C., P. & S. W. prop'n.	P. & P. U. prop'n.	Total.
February, 1881	221	3,319 51	291 20	3,610 71
March	295	4,302 08	377 38	4,679 46
April	286	3,729 57	327 15	4,056 72
Total	802	11,351 16	995 73	12,346 89

The above is a correct statement of the earnings on business to and from Peoria for the months mentioned as made up from the book of the receiver.

Joliet, July 27th, 1881.

SAM'L C. SMITH, *Aud.*

42 "EXHIBIT B."

Statement of Mileage of all Cars on the Peoria & Pekin Union R'y (Lower Peoria to Pekin) for February, March, & April, 1881.

	Mileage.	Prop'n.
FEBRUARY.		
Wabash, St. Louis & Pacific R'y	24,209	29.26 %
Ind., Bloom'g. & West'n R'y	23,401	28.28 "
Peoria, Decatur & Evans'e R'y	17,792	21.50 "
Peoria, Pekin & Jack'n. R'y	9,738	11.77 "
Chic., Pekin & So'western R. R.	5,488	06.63 "
Peoria & Pekin Union R'y	2,118	02.56 "
	82,746	1.00.00 "
MARCH.		
Wabash, St. Louis & Pac. R'y	25,480	27.76
Ind., Bloom'g. & West'n R'y	33,269	36.24
Peoria, Decatur & Evansv. R'y	16,070	17.51
Peoria, Pekin & Jack'n. R'y	10,477	11.41
Chic., Pekin & So'west'n R. R.	5,941	06.47
Peoria & Pekin Union R'y	563	00.61
	91,800	1.00.00
APRIL.		
Ind'a, Bloom'g. & West'n R'y	31,163	32.80
Wabash, St. Louis & Pac. R'y	25,937	27.30
Peoria, Decatur, & Evansv. R'y	16,310	17.17
Peoria, Pekin & Jacksonv. R'y	11,046	11.63
Chic., Pekin & So'west'n R. R.	7,174	07.56
Peoria & Pekin Union R'y	3,365	03.54
	94,995	1.00.00

Endorsed: Filed Sept. 5, 1881. Wm. H. Bradley, clerk.

43 Afterwards, to wit, on the twenty-fourth day of May, A. D. 1882, came the Peoria and Pekin Union Railway Company, by its solicitor, and filed in said clerk's office its supplemental petition in said entitled cause; which said supplemental petition is in the words and figures following, to wit:

Supplemental Petition.

United States Circuit Court, Northern District of Illinois.

THE FARMERS' LOAN AND TRUST COMPANY

vs.

CHICAGO, PEKIN AND SOUTHWESTERN R'Y CO.

Bill to foreclose.

In the matter of the claim of the Peoria and Pekin Union Railway Company.

To the Hon. Thomas Drummond, judge of said court:

As supplemental to the matters submitted to your honor by S. B. Reed, lately receiver in this cause, and the Peoria & Pekin Union Railway Company on or about March 28th, A. D. 1881, as to the rent and terminal charges required to be paid by the P. & P. U. R'y Co., and as supplemental to the petition of said P. & P. U. R'y Co. as to amount then due from the receiver herein to the P. & P. U. R'y Co. for rental and terminal services, filed herein July 14th, 1881,

44 the said P. & P. U. R'y Co. represents to your honor that there is now due to it from the late and present receivers in this cause for rent of tracks and terminal services in Peoria from February 1st, 1881, to March 1st, 1882, the sum of sixteen thousand four hundred and two & $\frac{65}{100}$ dollars, after crediting all payments and set-offs, which said sum includes the amount claimed in said petition of July 14th, 1881.

And petitioner begs that your honor will decide the matters of said petitions and of this supplemental petition, and order the receiver in this cause to pay petitioner the said sum of sixteen thousand four hundred and two & $\frac{65}{100}$ dollars.

And petitioner files herewith and as part hereof statements of account and exhibits from Feb. 1st, 1881, to March 1st, 1882.

PEORIA & PEKIN UNION
RAILWAY COMPANY,
By JNO. B. COHRS, *Its Sol'r.*

Endorsed: Filed May 24, 1882. Wm. H. Bradley, clerk.

45 On the same day, to wit, on the twenty-fourth day of May, in the adjourned May term of said court, A. D. 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE CHICAGO, PEKIN AND SOUTHWESTERN RAILROAD COMPANY. } In Chancery.

In the matter of the Peoria and Pekin Union Railway Company, upon the reading of the supplemental petition of said Peoria and Pekin Union Railway Company, and it appearing to the court that there are matters of fact upon which it is necessary to take evidence, it is ordered that the original petition of the Peoria and Pekin Union Railway Company, filed herein July fourteenth, A. D. 1881, and the supplemental petition of said party filed herewith, together with a statement of account, be and the same is hereby, referred to Henry W. Bishop, master in chancery of this court, to take such proof thereon as may be submitted to him by the parties in interest, and to report the same to this court, together with his conclusions thereon, at an early day.

46 It is further ordered that the evidence already taken upon the petition filed July fourteenth, A. D. 1881, shall be considered as taken hereon.

47 Afterwards, to wit, on the twentieth day of July, A. D. 1883, came Henry W. Bishop, one of the masters in chancery of this court, and filed in said clerk's office his report in said entitled cause; which said report is in the words and figures following, to wit:

Master's Report.

In the Circuit Court of the United States for the Northern District of Illinois.

FARMERS' LOAN & TRUST COMPANY
vs.
CHICAGO, PEKIN & SOUTHWESTERN RAILROAD COMPANY.

In the matter of the claim of the Peoria and Pekin Union Railroad Company.

To the Honorable Thomas Drummond, judge, etc.:

This petition asks for compensation from the Chicago, Pekin & Southwestern R. R. Co. for the use of its tracks from Pekin to Peoria and the terminal facilities at the latter point for a period commencing February 1, 1881, and ending March 1, 1882.

During the year 1879 arrangements were made between S. B. Reed, receiver of the respondent road, and the petitioner's road, then known by another name; and again, another arrangement between A. L. Hopkins, receiver of the same road, then known as the
48 Peoria & Springfield railroad, and S. B. Reed, commencing February 9, 1881, for the use of the latter's track from Pekin to Peoria and its terminal facilities at the latter place, upon terms

hereafter referred to, which arrangement is shown by the testimony to have continued until the Peoria & Springfield road was leased to the petitioner, The Peoria and Pekin Union R. R. Co. After this lease was made the respondent was notified of it and requested to pay for the track, rental and terminal facilities, the same sum that was required and received of other roads enjoying the same privileges.

From this time the receiver remained in this use until March 1, 1882, when, no definite understanding having been made between the parties, the receiver withdrew from any further use of these privileges. During the time, however, that he remained in possession he paid upon account the sum of $17,537.84, which was credited to him, and it is now claimed that there is still due for the balance of rent and charges the sum of $16,231.55, upon the basis of charges made to other railroads who were in joint occupation of the property. The money which was paid by the receiver satisfied all the charges except the rental, but leaving the sum of $8,143.45 to be applied in part payment of that item of charge. It is claimed, and the testimony seems to justify the claim, that the charges making up this account were at the same rate as those made to
49 and paid by other roads in their proper relative proportions, and is the same charge which the receiver was notified to pay in case he remained in use of petitioner's property after the 1st day of February, 1881.

The testimony of Mr. John B. Cohrs, which is herewith returned, furnishes the information from which these results are derived and refers for specific details of accounts and contract engagements to the exhibits which are thereto attached.

This testimony and these exhibits show the extent of the use of the petitioner's road by the defendant, and the contracts which are referred to in connection with the testimony are useful in showing the basis of what is contended to be the implied engagement of the receiver extending over the period of this accounting, which, it is insisted, was the same sum required of the other roads.

It is claimed upon the part of the petitioner that in the absence of the renewal of any of the old engagements between the parties (before using petitioner's property), and in view of the fact that the receiver was required to pay the same sum as the other roads as a gross rental in case he continued to use the property, that his remaining thereafter was an implied acquiescence in the required terms. No testimony has been introduced to show that these terms are not reasonable, except by comparison with what has been previously paid and the amount of business done by the respond-
50 ent road during this time as compared with that of the other roads referred to, and upon that basis it is insisted that the payments which have been already made satisfy petitioner's claim in full. There is nothing, however, before me which enables me to report the amount of compensation which the petitioner should have except as the result of the conditions upon which the receiver continued to use the property after the attempted making of a contract between the parties resulting in the notice referred to.

I therefore find from these relations and the implied undertaking upon the part of the receiver, arising from them, that there is due and owing from the defendant railroad to the petitioner upon the accounts between them as claimed by the petitioner the sum of $16,231.55.

If, however, the court should be of the opinion that there was no obligation upon the part of the defendant company to pay for this use the sum required of it, after notice to abandon any farther — unless these terms were accepted, and that the arrangement between the petitioner and the other railroad furnish no basis of charge between these parties, and that the defendant should be required to pay no more than it paid for the same privileges during the prior time referred to, then and in that case I find that the account has been satisfied by the payments already made and that there is nothing due the petitioner herein.

51 Respectfully submitted,

HENRY W. BISHOP,
Master in Ch'y.

Dated July 20, 1883.

Endorsed: Filed Jul. 20, 1883. W. H. Bradley, clerk.

Afterwards, to wit, on the eighteenth day of August, A. D. 1883, came A. H. Crocker, receiver of the Chicago, Pekin and Southwestern railroad, and filed in said clerk's office his exceptions to the master's report in said entitled cause; which said exceptions are in the words and figures following, to wit:

52 *Exceptions to Master's Report.*

United States Circuit Court, Northern District of Illinois.

FARMERS' LOAN AND TRUST COMPANY
vs.
CHICAGO, PEKIN AND SOUTHWESTERN RAILROAD COMPANY. } In Chancery.

In the matter of the claim of the Peoria and Pekin Union Railway Company.

And now comes A. H. Crocker, receiver of the Chicago, Pekin and Southwestern railroad, and excepts to the report of Henry W. Bishop, Esq., master in chancery, upon the claim of the Peoria and Pekin Union Railway Company, filed herein on the 20th day of July, 1883, and for ground of exception shows—

I. The master erred in stating that during the year 1879 arrangements were made between S. B. Reed, receiver of respondent road, and the petitioner's road, when in fact the arrangements referred to was made long before S. B. Reed was appointed receiver of the Chicago, Pekin and Southwestern Railroad.

II. The master erred in stating that an arrangement was made between A. L. Hopkins, receiver, and S. B. Reed, receiver, commencing February 9th, 1881, for the use of the track of the Peoria and

Springfield railroad between Peoria and Pekin, when in fact
53 the petition in this matter asks for payment from Feb'y 1st, 1881, and denies the existence of any contract.

III. The master erred in not finding that the respondent was restricted in the use and enjoyment of the same rights and privileges accorded to other roads by the Peoria and Pekin Union Railway Company, as is shown by the evidence, and as was agreed by the Peoria and Pekin Union Railway Company with S. B. Reed, receiver, when said Reed was permitted to continue in the use of the Peoria and Pekin Union railway tracks.

IV. The master erred in stating that the receiver remaining in the use of the Peoria and Pekin Union Railway tracts after February 1st, 1881, was an implied acquiescence in the terms of the contracts made with the other roads, when in fact the receiver continued in the use of the Peoria and Pekin Union railway tracks by an agreement which is set forth in his petition and is a part of the evidence in this case.

V. The master erred in finding that there was due the petitioner the sum of $16,231.55 or any other sum.

VI. The master erred in not finding, on the *quantum meruit* rule, that the receiver had paid all that the services rendered were worth.

A. H. CROCKER, *Receiver*,
By F. E. HINCKLEY, *Att'y*.

Endorsed: Filed August 18, 1883. Wm. H. Bradley, clerk.

54 Afterwards, to wit, on the thirteenth day of November, in the adjourned October term of said court, A. D. 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

FARMERS' LOAN AND TRUST COMPANY
vs.
CHICAGO, PEKIN AND SOUTHWESTERN RAILROAD COMPANY *et al.* } In Chancery.

On the intervening petition of the Peoria and Pekin Union Railway Company.

This case having been heretofore argued by the counsel of the respective parties on the exceptions taken to the master's report and the pleadings, proofs, and exhibits in the cause, and having been considered by the court and the court, being of the opinion that there was no obligation on the part of the defendant railroad company from the time when a demand was made upon the defendant railroad company by the petitioner for compensation to pay for the use of the tracks from Pekin to Peoria and the terminal facilities at the latter point until the time when the receiver of the Chicago, Pekin and Southwestern Railroad Company quit doing business
55 with Peoria, at the same rates that the other railroad companies referred to in the pleadings and proofs were paying

for the use of the same, but that the defendant railroad company had the right to pay for the use of the same according to the rates which it had previously paid for the use of the tracks from Pekin to Peoria and the terminal facilities at the latter point, and the said payment having been made according to said last-named rates, and that the petitioner is not entitled to a decree for any part of the compensation demanded in its petition; and it is therefore ordered and adjudged that the said petition be dismissed with costs, and that the alternative in the master's report, in conformity with this opinion, is confirmed, and that part which is not in conformity with the opinion of the court is not confirmed, without regard to the manner or form of the particular exceptions which have been filed to the said report.

And the petitioner prays an appeal to the supreme court, which is allowed on its giving bond according to law.

56 On the same day, to wit, on the thirteenth day of November, A. D. 1883, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, The Peoria and Pekin Union Railway Company and Columbus R. Cummings, are held and firmly bound unto the Farmers' Loan and Trust Company of New York, for the benefit of itself and all parties concerned, in the penal sum of five hundred dollars; for the payment of which, well and truly to be made, the said Peoria and Pekin Union Railway Company binds itself, its successors, and assigns, and the said Columbus R. Cummings binds himself, his heirs, executors, and administrators, jointly and severally and firmly by these presents. Sealed with our seals and dated at Peoria this twenty-seventh day of November, A. D. 1883.

The condition of the above obligation is such that whereas the above Farmers' Loan and Trust Company and others, in the suit hereinafter named, did, on the thirteenth day of November, A. D. 1883, at a term of the circuit court of the United States for the northern district of Illinois, then being holden within and
57 for the northern district of Illinois, obtain a decree against the above-bounden Peoria and Pekin Union Railway Company for costs of suit in the matter of the intervening petition of said Peoria and Pekin Union Railway Company filed in the suit of the said Farmers' Loan and Trust Company against the Chicago, Pekin and Southwestern Railroad Company and others, from which decree the said Peoria and Pekin Union Railway Company has prayed for and obtained an appeal to the Supreme Court of the United States:

Now, if the said Peoria and Pekin Union Railway Company shall duly prosecute said appeal, and shall moreover pay the amount of the judgment, costs, interest, and damages rendered and to be rendered against it in case the said decree shall be affirmed in the

said Supreme Court, then the above obligation to be null and void; otherwise to remain in force and virtue.

[SEAL.] PEORIA & PEKIN UNION R'Y CO.,
By C. R. CUMMINGS, *V. P.* [SEAL.]
C. R. CUMMINGS. [SEAL.]

Attest: R. A. BUNKER, *Sec'y.*

Endorsed: Approved Nov. 28, 1883. Thomas Drummond. Filed Nov. 28, 1883. W. H. Bradley, c'lk.

58 Afterwards, to wit, on the fourteenth day of December, A. D. 1883, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

59 *Stipulation.*

In the Circuit Court of the United States for the Northern District of Illinois, of the July Term, A. D. 1883. In Chancery.

FARMERS' LOAN AND TRUST COMPANY *vs.* CHICAGO, PEKIN AND SOUTHWESTERN RAILROAD COMPANY *et al.* } Bill to foreclose first mortgage.

FARMERS' LOAN AND TRUST COMPANY *vs.* CHICAGO, PEKIN AND SOUTHWESTERN RAILROAD COMPANY *et al.* } Bill to foreclose second mortgage.

In the matter of the intervening petition of the Peoria and Pekin Union Railway Company in above-entitled cause.

The said court having denied the intervening petition of the said Peoria and Pekin Union Railway Company in the above-entitled cause and the said petitioner having taken an appeal from its decision to the Supreme Court of the United States, and it being desired by the solicitors of the respective parties that the record to be sent to said Supreme Court shall not be encumbered with a full transcript of the pleadings in said original causes between
60 said Farmers' Loan and Trust Company and said Chicago, Pekin and Southwestern Railroad Company *et als.*, therefore, for the purpose of abbreviating the same, it is stipulated and agreed by and between the said solicitors as follows, viz:

First. That on the 30th day of October, A. D. 1877, the said Farmers' Loan and Trust Company filed a bill in said circuit court of the United States for the northern district of Illinois for the purpose of securing a foreclosure of the first mortgage or trust deed given to said company to secure bonds amounting to the sum of $1,000,000.00, together with interest claimed to be due thereon, which mortgage or trust deed was recorded in 1871.

Second. That upon the filing of said bill a receiver was appointed by the said circuit court to take charge of all and singular the

property and effects of the said Chicago, Pekin and Southwestern Railroad Company, and that he took possession of the same and has been in possession ever since.

Third. That in the month of August, A. D. 1879, the said Farmers' Loan and Trust Company filed a supplemental bill in said cause for the purpose of having a foreclosure of a second mortgage or trust deed given to it by said Chicago, Pekin and Southwestern Railroad Company to secure the sum of $750,000 and interest, which
61 said mortgage or trust deed was recorded in 1876.

Fourth. That issue was joined on both bills so filed by said Farmers' Loan and Trust Company and the causes referred to the master in chancery of said court, who took testimony in relation thereto and made his report to the court on the 31st day of December, 1880, and that on the 17th day of March, A. D. 1881, the court rendered a decree in said cause finding, among other things, as follows: "And the court finds, adjudges, and decrees that the prayer of said bill so filed praying for the foreclosure of said first mortgage or trust deed and the sale of the property and franchises mentioned and described therein be, and the same is hereby, denied; but the said bill is retained as a pending bill to protect the equities of the parties claiming under said first trust deed or mortgage in such way and manner as they may be advised.

"And the court further finds, adjudges, and decrees that there was at the time of the filing of the master's report as aforesaid and now is due to the Farmers' Loan and Trust Company, as trustee, and unpaid upon the said bonds issued under and pursuant to and secured by the said second mortgage or trust deed executed by the said defendant, The Chicago, Pekin and Southwestern Railroad Company, to the complainant, as trustee, for principal, the sum of seven hundred and fifty thousand dollars and two hundred and ten
62 thousand dollars for interest, making the whole amount due, secured and unpaid on said bonds and mortgage, the sum of nine hundred and sixty thousand dollars."

"The court further finds, adjudges, and decrees that the said defendant, The Chicago, Pekin and Southwestern Railroad Company was at the time of the filing said amended and supplemental bill and now is insolvent, and that its property is not sufficient to pay the amount found due and unpaid on the bonds issued under and pursuant to the said second mortgage, and also the amount secured and unpaid on the bonds issued under said first mortgage, and therefore it is further ordered, adjudged, and decreed that the defendant, The Chicago, Pekin and Southwestern Railroad Company, pay to the Farmers' Loan and Trust Company, as trustee, for the benefit of said second-mortgage bondholders, the sum of nine hundred and sixty thousand dollars and interest thereon from November 1st, 1880, within ten days from the entry of this decree, and in case default is made by said Chicago, Pekin and Southwestern Railroad Company in making such payment within the time aforesaid it is further ordered, adjudged, and decreed that the said second mortgage or trust deed be foreclosed by a sale at public auction of the property and franchises mentioned and described in said mortgage or trust deed."

63 Fifth. That under and by virtue of said decree a sale of the property and effects of said Chicago, Pekin and Southwestern Railroad Company was made by the master in chancery on the 30th day of May, 1881, for the sum of $750,000.00, and the purchaser paid into court the sum of $50,000.00 and the balance of the bid in said second-mortgage bonds, in accordance with permission given thereto, as set out in the sixth clause of said decree, as follows, to wit:

And it is further ordered, adjudged, and decreed that in case the owner or holder of said second-mortgage bonds shall become the purchaser at such sale said purchaser, after paying to said master said sum of $50,000.00 and such additional sum of money as may be required by the court, and which is to be subject to the order of the court, may, in lieu of so much cash, deliver to said master an amount of said second-mortgage bonds equal to the balance of his bid, in case his bid shall not exceed the amount due and unpaid on said bonds and coupons as aforesaid, and in such case said master will not be required to deliver to said Farmers' Loan and Trust Company the amount of bonds so received by him, but shall deliver the same to the president of the Chicago, Pekin and Southwestern Railroad Company.

64 Sixth. That said sale was confirmed by the court in the month of October, 1881, but, owing to a modification of the decree made on the 29th day of April, 1881, the deed has not been delivered to the purchaser, said modification being as follows:

"It is ordered by the court that the decree entered herein on the seventeenth day of March, A. D. 1881, during the present term, none of the parties objecting thereto, be so far modified as to declare that the deed of conveyance therein referred to by the master to the purchaser or purchasers shall not be delivered nor posession of the said railroad taken until the same is authorized by a special order of the court, after the confirmation of the sale," and that no order has yet been made directing the deed to be delivered to the purchaser and the property is still in the possession of and being operated by a receiver.

Seventh. That in June, 1881, the said Farmers' Loan and Trust Company filed another supplemental bill alleging a default under the first mortgage or trust deed, and that in the month of August, 1881, a decree of foreclosure was rendered thereon finding that there was $1,000,000.00, besides interest, due and directing the sale of the property, and that said decree is still in force, but no sale has as yet been made under it.

It is further stipulated and agreed that in preparing the record on the appeal taken to the Supreme Court of the United States
65 by said intervening petitioner the clerk of said circuit court of the United States shall incorporate the foregoing stipulation of facts in lieu of the pleadings and decrees in the above-entitled cause, except those upon said intervening petition.

Dated at Chicago, Illinois, this 10th day of December, A. D. 1883.

JOHN B. COHRS AND
J. S. LEE,
For Intervening Petitioner.
GEO. W. COTHRAN,
Solicitor for the Respondents.

Endorsed: Filed Dec. 14, 1883. Wm. H. Bradley, clerk.

66 On the hearing of said cause the certificate of evidence in said cause was filed in said clerk's office, and is in the words and figures following, to wit:

Certificate of Evidence.

Deposition of John B. Cohrs.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

In the Circuit Court of the United States for the Northern District of Illinois.

FARMERS' LOAN AND TRUST COMPANY
vs.
CHICAGO, PEKIN AND SOUTHWESTERN R'Y CO.

The Peoria and Pekin Union Railway Company, which I shall hereafter call the P. & P. U. R'y Co., is a corporation organized under the laws of the State of Illinois, on the 28th day of September, 1880, and its capital stock is owned equally by the Wabash, St. Louis & Pacific R'y Co., the Indiana, Bloomington & Western Railway Co, The Peoria, Decatur & Evansville Railway Co., and the Peoria & Jacksonville R'y Co., and is inalienable by those companies,
67 so made for the purpose of preventing any transfer of the stock that would impair the rights of the lessee roads.

I was vice-president of the P. & P. U. R'y Co. and its general counsel from its organization until March, 1883, and am familiar with its business and operations during that period.

A copy of the contract between the P. & P. U. R'y Co. and the four above-named roads, as lessees, I attach to my deposition and mark "Exhibit A." The same contract was offered to the receiver of the Chicago, Pekin and Southwestern Railway Company, except as to the ownership of the stock or representation in the board of directors.

The claim of the P. & P. U. R'y Co. under this application covers the period of thirteen months from February 1st, 1881, to March 1, 1882. At the time of the organization of P. & P. U. R'y Co. the C. P. and S. W. R'y Co. was being operated by S. B. Reed as receiver. On March 10th, 1879, an arrangement had been made by the receiver of the C., P. and S. W. R'y Co. with the then Pekin, Lincoln & Decatur railroad, lessee of the Peoria & Springfield railroad, for the privilege of hauling its own cars with its own engines over the main track of the P. & S. railroad between Peoria and Pekin,
68 and a copy of which agreement is hereto attached, marked Exhibit "B." That lease was only during the mutual agreement of the parties, as will be seen by the exhibit.

Some time in 1879 the lease of the Peoria & Springfield railroad to the P., L. & D. railroad terminated, and the P. & S. R. R. was operated by its receiver until about the 1st day of February, 1881,

and by an arrangement between Mr. A. L. Hopkins, the receiver of the Peoria & Springfield railroad, and Reed, as receiver of the C., P. & S. W. R. R. Co., the price for loaded freight cars moved by the C., P. & S. W. over the tracks of the P. & S. was raised to $2.50 per car, the other prices remaining as stated in Exhibit "B;" under that arrangement the C., P. & S. W. continued to move its trains over the P. & S. tracks until the P. & S. railroad was leased to the Peoria & Pekin Union Railway Company.

At the December term, 1880, the circuit court of Peoria county, Illinois, authorized the receiver of the Peoria & Springfield railroad to lease that property to the Peoria & Pekin Union Railway Company, and on the 1st day of February, 1881, said lease was made, to begin February 1, 1881, and a copy of which lease is hereto
69 attached, marked "C." After the making of the lease above, and before and after February 1st, 1881, Mr. Reed, the receiver of the C., P. & S. W. R. R. Co. was notified of the lease and notified that he would not be allowed to use the Peoria & Springfield railroad main track or its Peoria facilities, except upon the same terms as were accorded to other lessees, as stated in section 8 of "Exhibit A;" that, owing to the limited control of Mr. Reed, as such receiver, and the impossibility of his acting upon the proposition, except by order of the United States circuit court for the northern district of Illinois, and in order that the business of his road should not be impeded by summary withdrawal of his entrance into Peoria and use of Peoria terminal facilities, Mr. Reed, by agreement with the P. & P. U. R'y Co., was given all the facilities of a lease under said Exhibit "A" pending a final determination as to the acceptance of the proposition of the P. & P. U. R'y Co. But Mr. Reed always understood that the P. & P. U. R'y Co. was prohibited by its contract with the other roads from allowing him to use its track or its terminal facilities upon any other or different terms than were paid by the other lessee roads. Negotiations between Mr. Reed, as such receiver, and the P. & P. U. R'y Co.
70 resulted in an agreement that Mr. Reed should present to Judge Drummond a petition, which he did present on March 28th, 1881, and that, awaiting the decision of Judge Drummond thereon, the C., P. & S. W. continued to have all the facilities and use of the tracks and property owned or leased by the P. & P. U. R'y Co. the same as though he had executed said contract marked Exhibit "A," and he so continued until March 1st, 1882, when, no decision having been made by Judge Drummond, and the receiver of the C., P. & S. W. and P. & P. U. R'y Co. failing to make any agreement, the receiver ceased to use the property of the P. & P. U. R'y Co.

On July 14th, 1881, the P. & P. U. R'y Co. filed its intervening petition herein, and on May 24th, 1882, filed its supplemental petition, upon which an order was made referring the whole matter upon said petition to Henry W. Bishop, master in chancery, to take and report the evidence and his conclusions thereon; that Mr. Reed, as receiver of the C., P. & S. W., had paid to the P. & P. U. R'y Co. the sum of $17,537.84. The monthly statements of account of the P. &

P. U. R'y Co. for the thirteen months from February 1st, 1881, to March 1st, 1882, for rental and other charges, aggregating
71 $33,769.38, are shown on exhibits hereto attached, marked numbers 1, 2, 3, 4, and A to V, both inclusive, and are correct, as provided for by said contract marked Exhibit A, and the same as was paid by the lessee roads, except the maintenance charges are in proportion to wheelage, and the amounts paid by the receiver of the Chicago, Pekin & Southwestern railroad, as shown above, are to be deducted from the amount claimed to be due to the P. & P. U. R'y Co. During the thirteen months in question there were taken in and out of Peoria over the main tracks of the P. & P. U. R'y Co. by the lessee roads and by the C., P. & S. W. road the number of cars and of the kinds *of* follows:

Road.	Loaded freights.	Empty freights.	Pass. & bag. cars.
W. St. L. & P.	90,094	24,443	12,894
P. & J.	7,990	3,061	3,156
I., B. & W	20,888	8,221	5,835
P., D. & E.	16,110	6,418	3,424
C., P. & S. W.	6,014	2,484	1,355

During the thirteen months in question the lessee roads named in said "Exhibit A" have paid in the fixed rental charges and for the services specified in said Exhibit A as follows:

Road.	Rental.	Switching & maintenance & handling mdse.
W. St. L. & P.	$24,375	117,583 48
P. & J.	24,375	38,924 95
I., B. & W.	24,375	60,058 91
P., D. & E.	24,375	49,581 52

72 The Peoria & Springfield railway, over which the C., P. & S. W. had been moving its trains up to February, 1881, ran between Peoria and Pekin upon the east side of the Illinois river, crossing the river at Lower Peoria, and was possessed of fair terminal facilities in Peoria. The P. & P. U. R'y Co., by purchase, had acquired all the terminal facilities in Peoria of the Peoria, Pekin & Jacksonville railroad, and also the line of that road from Peoria to Pekin upon the west side of the Illinois river, crossing that river nearly opposite Pekin, and the P. & P. U. had also acquired all the terminal facilities in Peoria of the Wabash Railway Company, and

by the lease aforesaid had acquired the P. & S. railroad and its terminal facilities, and had added at its own expense largely to its terminal facilities in Peoria. The Chicago, Pekin and Southwestern railroad, instead of being restricted to the P. & S. railroad and its terminal facilities in Peoria, was admitted to all the tracks and facilities owned or possessed by the P. & P. U. R'y Co., and Mr. Reed paid, in accordance with the stipulations of the contract marked Exhibit "A," all the terminal charges of the P. & P. U. R'y, leaving unsettled only the fixed rental—that is, we applied the payment made by him in that way, and no distinction was
73 made between the C., P. & S. W. and the other lessee roads; we treated the C., P. & S. W. in all respects, so far as I know, as though it were a lessee of our property. In fact, shortly after the P. & P. U. R'y Co. leased the P. & S. railroad the bridge of the latter road across the Illinois river broke down, necessitating its complete rebuilding, and the use of that road by trains of the C., P. & S. W. was impossible, and so remained until after January 1st, 1882. During that time the P. & P. U. R'y Co. treated the C., P. & S. W. as one of its lessees and allowed its trains to be moved and its business transacted over the tracks of the P. & P. U. R'y upon the west side of the river, between Peoria and Pekin.

A contract similar to Exhibit "A" was made with the receiver of the Illinois Midland Railway Company, under which the Midland railway paid the P. & P. U. a fixed rental of $13,000 per annum, besides terminal charges, for an entrance into Peoria, though it used none of what is known as the main tracks of the P. & P. U. R'y Co. between Peoria and Pekin. The reason of this deduction was that the Midland railway used none of our main tracks between Peoria and Pekin, and the $13,000, the fixed charge to them, was
74 simply for the entrance into Peoria, and paid the same terminal charges as the other lessee roads.

It was supposed when Mr. Reed filed his petition before Judge Drummond that the judge would decide in a short time whether Mr. Reed should pay the P. & P. U. R'y Co. the fixed rental specified in the contract marked Exhibit "A," and if the judge decided that the C., P. & S. W. should not pay that rental, then Mr. Reed should retire from our tracks; if the judge authorized him to pay the fixed rental, then a contract similar to Exhibit "A" would be executed, to continue during the receivership, the judge having stated that he would not authorize a contract which should extend beyond the receivership.

Judge Drummond some time, I think, in December, 1881, or early in 1882, finally declined to decide upon Mr. Reed's petition and the briefs submitted, and said to me that unless the receiver of the C., P. & S. W. settled with the P. & P. U. R'y Co. by March 1st, 1882, we might shut them off from our tracks. We gave notice to that effect to Mr. Reed, the receiver of the C., P. & S. W., and he declined
75 to pay; the C., P. & S. W. was shut off from our tracks.

I don't remember that I ever reduced to writing with Mr. Reed the terms of his petition to Judge Drummond. Mr. Reed claimed that he had no authority as receiver to execute the contract

"A," but that he would present a petition to Judge Drummond for his action in the premises, and that pending the judge's decision he should use all of our terminal facilities and pay all terminal charges, and for the use of the main track between Pekin and Peoria should pay as he had been paying prior to February 1st, 1881—Judge Drummond's decision, when made, to relate back to February 1st, 1881, and cover the period up to the decision—but it was expressly stated in the verbal agreement between Mr. Reed and myself that he had no authority to allow him to use our tracks except upon the same terms as were paid by the other lessee roads, viz., $22,500 per annum for the use of the main tracks, and the terminal charges as specified in the contract, and in Mr. Reed's petition to the court it is recited that he was to have the rights of the Peoria and Pekin
76 Union railway tracks that were given to the lessees within the eighth section of the contract between the Peoria & Pekin Union Railway Company and the lessees; and the eighth section of that contract referred to in Mr. Reed's petition specifically prohibits the P. & P. U. R'y Co. from giving any other road the same facilities that were given to the named lessee roads at any less price than those roads paid.

And it was also agreed and understood between Mr. Reed and myself that he should pay all the terminal charges that the lessee roads paid, as specified in that contract, and the only thing that was referred to Judge Drummond for his decision was whether Mr. Reed should use our tracks by paying us the fixed rental of $22,500 or not, as I understood it. I don't see that Mr. Reed's petition was ever filed in this cause. This will be seen by reference to Mr. Reed's petition, which was presented to Judge Drummond, but never filed in this cause, a copy of which I attach to my deposition. We allowed Mr. Reed the use of our tracks under that arrangement as a favor, so as not to summarily interfere with the business of his road, not that he had any right upon those tracks, nor did Mr. Reed
77 ever claim that he had any right. We claimed, and claim now, that the property was ours. We did not seek to compel Mr. Reed to use it. He was free to decline to use it, but that we, as owners or lessees of the property, had the right to fix the terms upon which we would allow others to use our property. If they did not want it upon those terms they need not take it, but if they wanted to use, and used it, that they must pay our price, and upon that theory alone I submitted the case to Judge Drummond upon Mr. Reed's petition, supposing, as no doubt did Mr. Reed, that the judge would speedily determine that we should have our contract of rental or that the Chicago, Pekin & Southwestern railroad should cease using our tracks and property in Peoria and between Peoria and Pekin. Under this arrangement Mr. Reed ceased to pay to the Wabash Railway Company the terminal charges—charges for the use of the depot and a portion of the ticket agent's salary—which he had up to that time been paying to the Wabash Railway Company in Peoria, inasmuch as we had acquired all the Wabash facilities in Peoria and rendered those services to the Chicago, Pekin & Southwestern Railway Company under our lease, charging for them

78 to him under that lease the same as we charged to the other lessee roads.

Our account against the Chicago, Pekin & Southwestern, summarized, is as follows:

For rental	$24,375 00
Maintenance	3,433 37
Switching charges	5,318 80
Handling merchandise	601 12
Shop bills	41 09
Aggregating	$33,769 38

Mr. Reed, or the C., P. & S. W. railroad, has paid $17,537.83, which pays the following charges:

Handling merchandise	$601 12
Shop bills	41 09
Maintenance	3,433 37
Switching	5,318 80
And pays upon the rental	8,143 45

Leaving a balance due us on rental of $16,231.55. We never agreed that the rental should be fixed upon any wheelage basis or basis of business done, or that Mr. Reed should pay anything else except the rental fixed by the contract—$22,500 a year—to be paid in monthly payments.

I attach an itemized statement of our accounts from February 1, 1881, to March 1, 1882, inclusive, marking them as Numbers 1, 2, 3, and 4, and from "A" to "V," both inclusive, and all of which is shown upon the paper marked X, entitled "Statement of general account."

79 I want to say, to avoid any misunderstanding, that Mr. Reed filed the petition, a copy of which is attached to my deposition, before Judge Drummond, in accordance with an understanding and agreement between Mr. Reed and myself that he should file it for the purpose of getting Judge Drummond's authority, and at that time I was vice-president and general counsel of the Peoria & Pekin Union Railway Company and had charge of those matters for that company.

JOHN B. COHRS.

Subscribed and sworn to before me this 18th day of July, 1883.

H. W. BISHOP,
Master in Ch'y.

80 Copy.

EXHIBIT.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

In the Circuit Court of the United States for said District. In Chancery.

FARMERS' LOAN AND TRUST COMPANY
vs.
CHICAGO, PEKIN AND SOUTHWESTERN RAILWAY CO.

To the Hon. Thomas Drummond, judge of said court.

The petition of Samuel B. Reed, receiver in the above-entitled cause, respectfully represents—

That as such receiver he has been and now is using and occupying the Peoria and Springfield railroad from Peoria to Pekin as part of the line of the Chicago, Pekin and Southwestern railroad to Peoria, and has also been paying to the Wabash Railway Company certain terminal charges for handling freight and a proportion of rent of depot and for passenger agent at Peoria.

That on February 1st, A. D. 1881, all the railway tracks
81 between Peoria and Pekin, together with all the terminal facilities in Peoria and Pekin used by your receiver became, as your receiver is advised, the property of the Peoria and Pekin Union Railway Co., which company now proposes to make an arrangement with your receiver for the continued use of the track from Pekin to Peoria and for all necessary terminal facilities in Peoria.

That your petitioner has been in negotiation with the managers of the said Peoria and Pekin Union Railway Co. concerning the terms and conditions of such continued use, but has been unable to agree with said managers concerning the same.

That because of such failure to agree upon said terms and conditions the parties have mutually made the following agreement, in substance, to wit:

"Chicago, Pekin and Southwestern Railway Co. to have the (same) rights of the Peoria and Pekin Union railway tracts that are given to the several lessees within the eighth section of the contract between the Peoria and Pekin Union Railway Co. and the lessees, and the Chicago, Pekin and Southwestern Railway Co. to pay for the terminal services and facilities the same the lessees pay, the fixed
82 charge per month to be determined by Judge Drummond on an application to be made to him for that purpose by the receiver of the Chicago, Pekin and Southwestern railway upon notice to the Peoria and Pekin Union Railway Co., and to be made within thirty (30) days from March 15th, A. D. 1881; such fixed charge to be made, when determined by Judge Drummond, from February 1st, A. D. 1881, and until such determination the Chicago, Pekin and Southwestern Railway Co. to pay charges as now made; residue, if any, to be paid when Judge Drummond shall so determine."

Wherefore your petitioners pray that your honor will examine into the matter and determine for your receiver the rental to be paid by him to said Peoria and Pekin Union Railway Company.

And as in duty bound your petitioner will ever pray, &c.

S. B. REED, *Receiver.*

LOREN GRANT PRATT,
Solicitor for Receiver.

STATE OF ILLINOIS,
Northern District of Illinois, County of Cook, } ss:

83 Samuel B. Reed, receiver of the Chicago, Pekin and Southwestern railway, being first duly sworn, says that he has heard read the foregoing petition by him above subscribed and knows the contents thereof, and that the same is true as deponent verily believes; and further says not.

S. B. REED.

Subscribed and sworn to before me this 28th day of March, A. D. 1881.

[SEAL.] CHARLES B. McCOY,
Notary Public.

84 EXHIBIT A.

This indenture, made this — day of ——, anno Domini one thousand eight hundred and eighty-one, between the Peoria and Pekin Railway Company, a corporation under the laws of the State of Illinois, party of the first part, and the Indiana, Bloomington and Western Railway Company, party of the second part; the Wabash, St. Louis and Pacific Railway Company, party of the third part; the Peoria and Jacksonville Railroad Company, party of the fourth part, and the Peoria, Decatur and Evansville Railway Company, party of the fifth part, each for itself and not for the others, witnesseth: That whereas the said four last-named railway companies, for the more convenient and economical transaction of their business and the better accommodation of the public, desire to extend and improve their facilities in the city of Peoria, in the State of Illinois, and to that end have caused to be organized and incorporated, under the laws of the said State of Illinois, the said Peoria and Pekin Union Railway Company, party of the first part hereto, the capital stock of which is to be taken, held, and owned by the said four constituent companies, as hereinafter mentioned;

85 and whereas the said party of the first part, for the purpose of its organization and the uses hereinafter set forth, hath acquired—

First. The absolute ownership of that part of the *time* of railroad in the State of Illinois now or lately known as the Peoria, Pekin and Jacksonville railroad, commencing at a point on the main track of said railroad in the city of Pekin, Illinois, know- as and including the junction switch, north of the Union depot, in said city of Pekin; thence northwardly and westwardly to the terminus of said railroad, in the city of Peoria, Illinois, including all main

tracks, side tracks, turn-outs, switches, right of way, road-bed, superstructure, bridges, depots and depot grounds, turn-tables, round-houses, stock yards, building, real estate, leasehold rights, and terminal facilities in the said city of Peoria, and all the appurtenances to the said part of the said railway between said place of beginning and the terminus of the said railroad in the city of Peoria.

Second. The exclusive use and enjoyment of the line of railroad in Illinois and known as the Peoria and Springfield railroad, as the same is now located and constructed between the said cities
86 of Pekin and Peoria, with all the property, equipment, terminal facilities, and appurtenances of said railroad between the said cities and in either or both thereof.

Third. The exclusive use and enjoyment of the main tracks, side tracks, turn-outs, switches, terminal facilities, and appurtenances within the said city of Peoria, lately of that line of railroad in Illinois known as the Toledo, Peoria and Western railway, more specifically mentioned and described in a certain contract, bearing date the — day of ——, A. D. 1881, between the Wabash, St. Louis and Pacific Railway Company, the lessee of the said Toledo, Peoria and Western Railway Company, of the one part, and the said Peoria and Pekin Union Railway Company, of the other part:

Now, therefore, this indenture witnesseth: That the said party of the first part, in consideration of the premises, of the rents, tolls, and dues hereinafter reserved, and of the covenants and agreements of the said lessees, respectively, hereinafter contained, hath covenanted and agreed, and by these presents doth covenant and agree, to and with the said parties of the second, third, fourth, and fifth parts, respectively, and their successors and assigns as follows—that is to say:

87 First. That it will, from time to time, procure the execution and delivery of such leases, contracts, and conveyances, and such executions thereof, and of its corporate franchises under the laws of the State of Illinois, as shall fully vest in it the right, power, and authority to maintain and defend the said lessees hereinafter named and their successors in the use and enjoyment of the estate, rights, and privileges hereby demised and granted, so long as this contract shall remain in force between the said parties thereto.

Second. That it will, from time to time, keep up and maintain all of its said main tracks, side tracks, switches, connections, and terminal facilities in the cities of Peoria and Pekin in good working order and condition, and will from time to time acquire such additional terminal facilities and make such additions to its present tracks, side tracks, and switches as shall or may be necessary to the prompt and efficient performance of its covenants herein contained and of the service by it to be performed under this contract.

Third. That it will, within a reasonable time hereafter, and
88 upon grounds to be acquired by it, construct, finish, and equip and thereafter maintain an Union passenger depot in the said city of Peoria, with the necessary tracks for access thereto, and will provide the said passenger depot with all the usual supplies, furniture, and appendages for the convenient use thereof; that

it will warm and light the same and keep and maintain it in good repair and condition, and provide a reasonable number of ticket, baggage, and other agents and employees to conduct and manage the business incident thereto, and that until the completion of the said Union passenger depot it will provide and furnish suitable and sufficient standing room and other accommodations for the passenger trains of the said several lessees of the said city of Peoria.

Fourth. That it will provide and maintain all such engines, tenders, and other rolling stock, machinery, appliances, turn-tables, buildings, and other structures, and all such mechanics, workmen, and employees as shall be reasonably necessary for the conduct of the business and rendering the services herein required to be done and rendered.

89 Fifth. That it will provide suitable and sufficient round-house accommodation at the city of Peoria, where the said lessees and each of them and their employees can shelter and care for their locomotive engines engaged in their traffic to and from the city of Peoria, and will keep up and maintain the same during the continuance of this contract in good servic-able condition, and will provide suitable and convenient turn-tables for turning the engines and cars of the said lessees and maintain the same in servic-able condition.

Sixth. That it will provide and furnish in the said city of Peoria suitable and convenient freight house or houses for the handling of freight from and to the cars of said lessees, and sufficient laborers for the prompt loading and unloading thereof, and that it will furnish such convenient standing room as shall be necessary for the loading and unloading of freight cars of the lessees on the track from and to wagons or drays.

And this indenture further witnesseth: That the said party of the first part hath let, leased, and demised, and by these presents doth let, lease, and demise, unto the said parties of the second,
90 third, fourth, and fifth parts, respectively, their successors and assigns, all and singular its said main tracks, side tracks, switches, turn-outs, connecting tracks, round-houses, freight-houses, passenger depots, and all its terminal facilities in the said cities of Peoria and Pekin, whether the said described premises are now owned or held by said first party or shall be hereafter acquired:

To have and to hold, under the terms, provisions, stipulations, limitations, and conditions for the use and enjoyment thereof herein contained, unto the said parties of the second, third, fourth, and fifth parts, respectively, and their successors and assigns, severally and equally, as tenants in common, for and during the full term and period of fifty years from and after the — day of ——, A. D. 1881, and renewable from time to time from like periods forever on the same terms, provisions, stipulations, limitations, and conditions, subject to the earlier determination of this lease as hereinafter provided, but not exclusively, however, the said party of the first part hereby expressly reserving unto itself the full right and power
91 to make contracts for the use and enjoyment of the said demised premises by other railroad companies doing business

at the said city of Peoria or desiring to do so; the said lessees to take, use, occupy, and enjoy said demised premises in the manner following, and not otherwise—that is to say:

First. The said lessees shall severally have the right to the common use and enjoyment of all the main tracks aforesaid of the said party of the first part between their terminis in the said cities of Pekin and Peoria, and the necessary side track for passing trains, in running their trains of every class over the same or any part thereof, with their own engines and employees, between Pekin and Peoria, and for the purpose of delivering and receiving their trains and cars to and from the party of the first part and to and from the said Union passenger depot.

Second. The said lessees shall severally have the right to use the said round house or houses, together with the necessary approaches thereto for the cars and shelter of their engines, and to use said turn-tables for the purpose of turning their engines and cars.

92 Third. The said lessees shall severally have the right to the use of the said freight house or houses and of the proper tracks connecting therewith for the purpose of loading and unloading freight, and also the use of the standing room provided for the loading and unloading of cars from or to wagons and drays, the first party to furnish the necessary labor therefor.

Fourth. The said lessees shall severally have the right to the use of all the transfer tracks, side tracks, switches, and turn-outs and other terminal facilities of the first party at the said cities of Peoria and Pekin for the transfer of loaded and empty freight and other cars by the said first party from and to all freight-houses, warehouses, packing-houses, stock-yards, grain elevators, distilleries, mills, and other industries, and to and from the tracks and warehouses of other railroads, with any of which any of the tracks of the first party shall at any time be connected, whether such tracks or any of them shall be owned or held or in some otherwise controlled by

93 said first party; and the said party of the first part, for the considerations aforesaid, do hereby covenant and agree, promptly and efficiently and without discrimination or partiality in favor of any company or the business thereof, to make such transfers of the loaded and empty freight and other cars of the said lessees, respectively, the said first party hereby reserving unto itself the right to make transfers for all companies and persons desiring such services, without prejudice, however, to the business of the said several lessees. The said first party shall also make up and deliver on the main track all freight trains, and at the Union passenger depot all passenger trains of the said lessees, respectively.

Fifth. The said lessees shall severally have the right to the use of the said Union passenger depot when the same shall be constructed and the appurtenances and approaches thereto, and to run said passenger trains into and out of said depot; but until the completion of the said Union passenger depot the said lessees shall severally have the use of convenient and suitable accommodations for their passenger

94 trains, to be furnished by the said first party, and they shall at all times have the use of sufficient, convenient, and suit-

able standing room for their passenger, baggage, and mail cars at said city of Peoria, while not in use, on tracks to be provided and set apart by said first party.

Sixth. The said lessees shall severally have equal rights and accommodations in the use and enjoyment of all elevators, stock-yards, and other property and facilities at any time acquired or controlled by the said party of the first part.

The said party of the first part reserving, however, unto itself, its successors and assigns, the rents, tolls, incomes, and payments hereinafter provided to be paid by the said several lessees, respectively.

And in consideration of the premises and of the covenants herein contained to be performed by said party of the first part the said lessees, respectively, do hereby covenant and agree, each for itself and its successors, and not one for the other, that during the continuance of this contract it will pay unto the said party of
95 the first part and its successors as rental for the said demised premises and for the use and enjoyment thereof as herein provided for in the manner following—that is to say:

First. The sum of twenty-two thousand five hundred dollars per annum, to be paid in equal monthly installments during the continuance of this contract, the installments of each month to become due and payable on the fifteenth day of the succeeding month and to be paid at the place where the quarterly installments of interest on the first-mortgage bonds of the party of the first part shall be payable, and when so paid the same shall be held for the payment of the next accruing interest on said bonds, and to be so paid out and not otherwise.

Second. The said lessees shall also severally pay to the treasurer of the said party of the first part, at the said city of Peoria, on the fifteenth day of the succeeding month or within ten days after a statement thereof shall be furnished by the said first party,
96 their just proportion of the expenses incurred or paid during the preceeding month by the party of the first part for the maintenance, renewal, and keeping in thorough repair and working condition the said main track and sidings, passenger depot approaches and facilities, freight and round house or houses, and all other property which shall be used by the said lessees in common with the said party of the first part, and of such other proper joint expenses and charges as shall accrue from the common use of said main tracks, depots, freight and round houses, and other property used in common, such just proportion to be fixed and determined by the number of wheels used and run by the said parties, respectively, on said main tracks, the said moneys to be paid by the lessees, respectively, to bear the same proportion to the whole amount of said expenses so to be incurred which the number of wheels used and run by the lessees, respectively, on the said main tracks shall bear to the whole number of wheels used and run on the said
97 main tracks for the proceeding calender month: Provided, however, That it is expressly understood that the expenses of maintenance, renewal, and repair of all tracks lying within the

yards of the first party at and near Peoria and Pekin shall be borne and defrayed by the said first party at its own cost.

Third. After the completion of said Union passenger depot the said lessees shall also severally pay, at the time and in the manner last aforesaid or within ten days after a statement thereof shall be furnished by said first party, such reasonable sum for each of their passenger, mail, and baggage cars entering or leaving said passenger depot during the preceding calendar month as shall be fixed by said first party, being an uniform rate per car to be charged to all companies which shall run their passenger trains to and from the said depot, without discrimination, which shall include the charges for making up trains.

Fourth. The said lessees shall also severally pay, at the time and in the manner last aforesaid, or within ten days after a state-
98 ment thereof shall be furnished by the party of the first part, all such reasonable charges as shall be made by the party of the first part for the preceding calendar month for the transfer service hereinbefore required to be done to and from connecting railroads, being an uniform rate per car, which shall have been previously fixed by said party of the first part, to be charged to all companies for such service without discrimination, and which shall approximate the actual cost of such service as nearly as practicable, which shall include the charges for making up trains.

Fifth. The said lessees shall also severally pay at the time and in the manner last aforesaid, or within ten days after a statement thereof shall be furnished by the party of the first part, all such reasonable charges as shall be made by the party of the first part for the preceding calendar month for handling and switching their loaded and empty cars to and from freight-houses, warehouses, packing-houses, stock-yards, grain elevators, distilleries, mills, and other in-
99 dustries at the cities of Pekin and Peoria, being an uniform rate per car which shall have been previously fixed by the said party of the first part, to be charged to all companies and persons for such service without discrimination. which shall include the charges for making up trains.

And for the consideration aforesaid, and to the end that the business of the said parties hereto be conducted with the greatest economy and promptness, the said parties hereto do hereby covenant to and with each other, each for itself and not one for the other, as follows—that is to say:

First. That each of said lessees and their successors shall and will, at and upon the completion of the said Union passenger depot in the city of Peoria ready for use, use and occupy the same thenceforward, during the continuance of this contract, as and for its passenger depot at the city of Peoria, and run into the said passenger depot all its regular passenger trains coming into the said
100 city of Peoria, and run all its regular passenger trains going out of or leaving said city from the said passenger depot, and from and to no other depot in Peoria; and that all of the loaded and empty freight cars of the said lessees, respectively, coming into and going out of the said city of Peoria, whether the same be for

transfer to or from the said main tracks and to or from other railroads, or consigned to or from any of the industries in the city of Peoria before mentioned, shall be delivered to the said party of the first part, to be transferred, switched, or handled by it for such lessee, and that all of the freight or passenger trains of the said lessees, respectively, moving to or from Peoria shall pass over the track of said first party.

Second. Neither the party of the first part nor any of its managers, agents, or employees shall in the conduct of said business in any manner discriminate in favor of any company in respect to the use of its said main tracks, side tracks, and switches, depots, freight-houses, and other property, or in respect to the handling,
101 switching, or transferring of any cars as herein provided for; and that each of said lessees shall in all respects have equal facilities and accommodations with any and all other companies now or hereafter having the right to the use and enjoyment of the said premises, and the performance of the services herein provided for, and the business of each of the said lessees shall at all times receive the like care, attention, and accommodation from the party of the first part, its officers and agents, and shall be amenable to like control and treatment.

Third. That the said party of the first part shall make and establish all such reasonable rules and regulations consistent with the provisions hereof as shall be necessary for the operation and movement of trains and cars upon and over all of its said tracks, and the use of said Union passenger depot, freight and round houses, and the other property and privileges hereby granted, but such rules and regulations shall be general in their character and operation, and shall be complied with by and enforced against all per-
102 sons and companies having the use of said tracks, without discrimination.

Fourth. That the party of the first part shall have the general management, control, and supervision of said main track, Union passenger depot, and its approaches, depot grounds, and all other property of the party of the first part which may be used by the said lessees, and the full and sole control and direction of the management, use, location, improvement, and repair of the same, and the appointment and supervision of all officers, agents, and employees necessary for such purposes. Nothing herein contained shall prevent the party of the first part from assigning for the use of each of the said lessees a particular track or tracks upon the main line or in said Union passenger depot or its approaches or from changing such assignment as the traffic and business over the road may from time to time require, or to prevent the party of the first part from shifting, relaying, changing, or extending its tracks or road-bed or making such improvements or additions to
103 the same as may become requisite and necessary, provided the said party of the first part shall always keep up and maintain its main track to their present termini.

Fifth. That each of the said parties hereto shall have the right to arrange its own time tables, but this right shall be so exercised as

not to cause unnecessary inconvenience to the other parties hereto. Should dispute arise between the said parties or any of them as to the arrangement of trains or the use of the tracks or the Union passenger depot and its approaches or use of said freight and round houses the party of the first part expressly reserves the right and power to determine, establish, and enforce the arrangement of trains and time tables, the use of the depot and its approaches and other property used in common, and, if necessary for the safe and proper conduct of the traffic over the tracks of the party of the first
104 part, it shall have the power to prescribe and regulate the rate of speed and the movements of trains: Provided, however, That the trains and business of the same class of the lessees severally shall at all times have preference and precedence in the use of the said main tracks, switches, and turn-outs over the like trains and business of other companies subsequently acquiring the right to use said tract: And provided further, That all trains of the said parties hereto shall have preference and precedence over all inferior trains of all roads or companies and of each other.

Sixth. That neither the said party of the first part nor any of its officers, agents, or employees shall at any time or on any pretense whatever regulate, control, or otherwise interfere with the divisions of passenger or freight traffic over any of the railroads entering or leaving any points on the lines of the said party of the first part, nor shall they or any of them in any way influence or control busi-
105 ness or seek or attempt to influence or interfere with said business by giving information concerning the same or otherwise in favor of or against any company or person, and that each of said lessees shall at all times be free to make its own rates for the transportation of freight or passengers without any interference or restraint from or by said party of the first part, its officers, agents, or employees, or any of them, but the said party of the first part hereby reserves to itself the entire local freight and passenger business between the city of Peoria and the city of Pekin and intermediate points or stations between the two places; none of the said lessees shall participate therein, except upon such terms as shall be extended to all the roads having the right to use said main tracks and upon a schedule of rates therefor to be prescribed by said party of the first part and to be observed by all companies; and should the said lessees, or any of them, fail to comply with such schedule, either by rebates or otherwise, such lessee may be altogether excluded
106 from participating in such local traffic; and the said several lessees hereby further covenant and agree that they will account for and pay over monthly, at the time and place of other monthly payments, to the said party of the first part, all sums collected by them for or on account of said local freight or passenger traffic in excess of the fair cost of such service.

Seventh. That the said party of the first part shall keep a faithful and true record of all the freight and passenger cars handled by it by each of the said lessees, and shall at all times be open for the inspection of said lessees and their agents duly appointed for that purpose, and shall furnish statements thereof from time to time

when requested by either of said lessees, and that each of said lessees shall keep a faithful and true record of all the cars which it shall move over any of the tracks of the party of the first part, and which shall not be handled by it, the said first party, and shall make such reports thereof from time to time as shall be required
107 by said first party, which said records shall at all times be open to the inspection of said first party and its agents duly appointed for that purpose.

Eighth. Any other railroad company whose road shall now or hereafter run into said city of Peoria or that shall desire to procure an entrance into said city shall be allowed to acquire the same rights and privileges as the said several lessees, but no other, and upon no less rental upon entering into a like contract hereto with the party of the first part, except as to representation in the board of directors of the party of the first part and ownership in its capital stock.

Ninth. That each of the said lessees, respectively, each for itself and not one for the other, will forever save, indemnify, and keep harmless the said party of the first part from all suits, actions, costs, and damages arising from or by reason of its acts, negligence, or failure in duty or of any of its officers, agents, or employees,
108 and will, at its own proper costs and expense, defend all actions and suits, whether at law or in equity, which may be brought against said party of the first part for or on account of the acts, negligence, or failure of duty of such lessee or of any of its officers, agents, or employees, and will well and truly pay or cause to be paid all such sums as shall be recovered therein against the party of the first part, and that the said party of the first part will forever save, indemnify, and keep harmless the said lessees and each of them and their successors from all suits, actions, costs, and damages arising from or by reason of its acts, negligences, or failure of duty, or of any of its officers, agents, or employees, and will at its own proper cost and expense defend all actions and suits, whether at law or in equity, which may be brought against either of said lessees for or on account of such negligence or failure of duty, and will well and truly pay or cause to be paid all such sums as shall be recovered in such suit against said lessees or either of them.

109 Tenth. Neither the said lessees nor any of them shall sell, assign, transfer, or underlet the rights and privileges hereby granted, or any of them, without the consent of the said party of the first part, expressed by resolution of its board of directors, approved by all the members of said board, nor shall they or either of them have the right by any contract with any other railroad corporation or the owner or owners of any railroad to give to such corporation or owner the right for its trains to pass over or use the railroad of the party of the first part: Provided, That any purchaser of the property of either of said lessees under any sale thereof, by virtue of any mortgage or deed of trust, or at any judicial sale thereof, may, at his option, by such sale acquire the rights of such lessee and be subject to and bound by all the covenants and provisions hereof: And provided further, That if any of the said lessees

shall consolidate its stock, property, and franchises with those of any other corporation, then the corporation or company formed
110 by such consolidation shall have all the rights and privileges of such lessee under this contract; And provided further, That if any of the said lessees shall at any time desire to extend its road it shall have the right to connect the tracks of said extension with the main tracks of the said party of the first part: And provided further, That the rights and obligations of the several parties to this contract shall be in nowise affected by any lease, consolidation, or merger of any two or more of said parties, but that each of the parties hereto shall have the right to demand, in case of such merger, the full performance of the obligations of this contract by each of the parties thereto to such extent that no additional burden shall result to any of the others for such lease, consolidation, or merger.

Eleventh. The general manager, superintendent, or other officer charged with the operation and care of the property hereby demised and leased shall be nominated by the party of the first part, but he shall not enter upon his duties until his nomination shall be
111 approved and confirmed by the general manager or other managing office- of each of said lessees. All subordinate officers, agents, and employees of the party of the first part engaged in the operation of the premises hereby demised or any part thereof shall be subject to peremptory discharge and removal on the request of any of the parties hereto.

Twelfth. If at any time any of the said lessees shall consider itself aggrieved or injured by the conduct of the general manager or other managing officer charged with or assuming the operation and control of said demised premises such officer shall be immediately removed and discharged by the party of the first part upon the request of said complaining lessee, unless the party of the first part shall determine that there is no just cause of complaint against such officer, and unless such officer shall be removed or in case any controversy shall arise between the parties hereto or any of them in respect to the true construction of this agreement or any part thereof, or in respect to the amount to be charged to or paid by the said lessees or any of them from time to time for the
112 rights and privileges hereby granted or for the services herein required and provided to be rendered, or in respect to the fairness and impartiality of the party of the first part or of its officers, agents, and employees in handling their business or in furnishing facilities in connection with their business, and in case such controversy cannot be adjusted between the parties the same shall be submitted to determination by arbitration as follows: Said lessee complaining shall select and report to the party of the first part, its president or managing agent, in writing, a disinterested person as referee, which writing shall specify the matters and things complained of by said lessee, and the party of the first part shall thereupon select a disinterested person as its referee and report his name to the complaining party, and if the party of the first part shall fail or neglect to make and report such selection for the period of ten days after receiving the notice aforesaid, then the referee se-

113 lected by said complaining party shall make such appointment and selection of the party of the first part, and the two so selected shall select a third, who shall also be a disinterested person and not an officer, agent, or employee of any company having a contract for the use of its property with the party of the first part, and shall be a person of experience and skilled in railway management, and the three persons so selected shall, after ten days' notice in writing to the parties of the time and place fixed for the hearing, proceed to hear and determine such controversy, and their decision or that of a majority of them, expressed in writing, shall be final and conclusive upon said parties; but pending such reference no lessee shall be exonerated from paying any amount so in controversy to the party of the first part; but after such award or decision shall have been rendered such lessee shall have the right to credit any amount found to be due it or overpaid by it upon any subsequent dues of the same class, and until the performance of or

114 compliance with any such award by the party of the first part such lessee shall be absolved from any obligation to make any of the payments provided for in this contract, except the fixed rental of twenty-two thousand five hundred dollars, payable as aforesaid.

Thirteenth. If any of said lessees shall make default for the period of sixty days in the payment of any of its said monthly rents, tolls, dues, and compensations, or of any installment or part thereof, at the time and place when and where the same is required to be paid as aforesaid, the said party of the first part may, at its option or any time thereafter, such default continuing, exclude all passenger and freight trains of such delinquent from the tracks of the party of the first part and its passenger trains from the said Union passenger depot until such default and all subsequently accruing defaults shall be made good, and may proceed in any appropriate action, either at law or in equity, to recover the same and any subsequently incurred default from such delinquent; and the said delin-

115 quent shall, notwithstanding such exclusion in consequent of its default, remain bound by all the covenants herein stipulated by it to be performed.

And the said party of the first part, for its corporate purposes and the better to enable it to perform the covenants herein provided to be performed by it, being about to borrow the sum of one million five hundred thousand dollars, to be evidenced by fifteen hundred bonds of one thousand dollars each in the usual form of railroad bonds, to become due in forty years from the date thereof, and to bear six per cent. annual interest, payable quarterly, principal and interest payable in the gold coin of the United States, and to secure the same by a first mortgage or deed of trust upon all its corporate property and franchises now owned or hereafter to be acquired, together with all its income and revenues, which said mortgage shall be subject to all the covenants contained in this contract:

It is further covenanted between the parties hereto that

116 any income bonds issued and mortgage made to secure them shall be made also subject to the terms of this agreement, and

shall not bear a greater rate of interest than six per cent. per annum, non-cumulative, to be paid only out of the net earnings of the said party of the first part after paying all expenditures for renewals, bette-ments, repairs, operating expenses, and the interest upon said first-mortgage bonds; that all mortgages of the property, rights, privileges, and franchises of the party of the first part shall be subject to this contract, but such mortgage may transfer or assign this contract to the trustee named in such mortgage by way of security to the bonds issued and secured thereunder; that no sale of the property of the party of the first part by the trustee or trustees named in any such mortgage or under any legal proceedings under such mortgage shall divest or impair the rights and privileges of the said lessees or any of them, and that any purchaser at any such sale shall be held and taken to be the successor of the party of the first
117 part hereto, and as such bo-nd by the covenants herein contained.

It is further covenanted and agreed by and between the parties hereto, in consideration of the premises and in consideration of the personal ownership of the said lessees of the capital stock of the party of the first part, as follows—that is to say :

First. The capital stock of said party of the first part shall consist of ten thousand shares of one hundred dollars each, and shall never be increased or diminished without the consent of each of said lessees so long as said lessee shall continue to be the owner and holder of any part of said capital stock.

Second. That the board of directors of the said party of the first part shall consist of twelve members, divided into three classes, as now provided by the laws of the State of Illinois ; that the number of directors shall never be changed without the consent of each of said lessees so long as such lessee shall continue to be the owner and holder of any part of said capital stock ; that the privilege of cumulative voting for directors shall never be abridged so as to
118 prevent each of said lessees from electing the one-fourth part of the entire membership of said board, and should any vacancy occur in said board of directors by reason of the death, resignation, or other incapacity to act of any member thereof elected by the stock held by any of said lessees such vacancy shall be filled only on the nomination of the lessee which elected the member whose vacancy is to be filled, but should such lessee fail to nominate such person to fill such vacancy at the meeting of the board held for that purpose, of which meeting at least ten days' written notice shall have been given to each of said lessees, then the vacancy may be filled by the votes of a majority of the board of directors.

Third. That the board of directors of said party of the first part may delegate its duties to an executive committee, to consist of four members of the board of directors, who shall be chosen by the board by ballot; that at such election the privilege of cumulative voting shall be exercised by the members of said board and shall never be abridged so as to prevent the members of said board elected by the vote of each of said lessees,
119 respectively, from cho-sing one of the members of said execu-

tive committee; that should any vacancy occur in the said executive committee by the death, resignation, or other incapacity to act of any member the vacancy shall be filled on the nomination of the remaining members of the board by whose votes he was chosen, and not otherwise, except that in case of default of such remaining members of the board to fill such vacancy the vacancy may be filled by the remaining members of the executive committee at a meeting held for that purpose, at the time and place of which ten days' written notice shall have been given to the members of the board by whose vote such vacancy is to be filled; that no action of the said board of directors or of the said executive committee shall be valid during the existence of any vacancy in its membership, except the filling of such vacancy; no action shall at any time be taken by the said board or executive committee affecting either of said lessees or its business without the vote of a majority of the whole membership thereof, nor shall any action of the said board
120 or of the executive committee affecting either of said lessees or its business be valid unless five days' personal notice shall have been given of the time and place of such meeting to each of the members of said board or committee, as the case may be; and in case of the sickness of any member of said executive committee, or in case of the inability to attend any of the meetings of said committee, he shall have the right to appoint one of the other members of the board of directors as his proxy to attend such meeting and to act and vote thereat in his place and stead.

Fourth. The certificates of capital stock of the party of the first part shall be issued as follows: One certificate of twenty-five hundred shares thereof to the Wabash, St. Louis and Pacific Railway Company, one certificate of twenty-five hundred shares to the Indiana, Bloomington and Western Railway Company, one certificate for twenty-five hundred shares to the Peoria and Jacksonville Railroad Company, and one certificate of twenty-five hundred shares to the Peoria, Decatur and Evansville Railway Company, and all
121 of said certificates of capital stock shall express upon their face that they are not transferable in whole or in part without the consent in writing of the Wabash, Saint Louis and Pacific Railway Company and the Indiana, Bloomington and Western Railway Company, the Peoria and Jacksonville Railroad Company and the Peoria, Decatur, and Evansville Railway Company, except that stock issued on request of either of the said companies to any person to qualify him as a member of the board of directors shall be transferable to the company on whose request it shall have been issued without the consent of the other companies, but certificates of stock so issued shall express upon their face that they are only transferable to the company on whose request they were issued without the consent of the other companies above mentioned.

Fifth. The by-laws of the party of the first part hereto containing any of the foregoing provisions shall never be altered or amended without the consent in writing of all such lessees as shall continue to be holders of any part of the capital stock of the party of the first part.

122 It is stipulated that the charges of the party of the first part for the services herein provided to be by it rendered shall be at the usual rates for similar services in other cities, and shall not be reduced until the net income of the party of the first part fully provides for the interest upon its first mortgage and income bonds.

In testimony whereof the said parties hereto have caused these presents and four others of like tenor and effect to be executed by their respective presidents and attested by their respective secretaries, under their several corporate seals, this — day of ——, A. D. 1881.

123 "EXHIBIT B."

Memorandum of an agreement made and entered into this 10 day of March, A. D. 1879, between the Pekin, Lincoln and Decatur Railway Company and the Chicago, Pekin and Southwestern railroad, by F. E. Hinckley, receiver, witnesseth:

That, in consideration of the covenants and agreements hereinafter made to be kept and performed by the said party of the second part, the said first party agrees to allow the said second party to run its trains, both freight and passenger, over the track of the said first party between Pekin and Peoria, on the following conditions, to wit:

First. The said party of the first part agrees to take the cars of the said second party from a point to be determined upon by the superintenden-s of the respective roads, for the delivery of the same to the said tracks of the said first party and to all warehouses, yards, and places for receiving and unloading freight, owned, used, or controlled by said first party in Pekin, and to return the same to the said second party, for which service the said second party
124 shall pay to the said first party the sum of two ($2.00) dollars for each loaded car, the said sum of two (2) dollars to cover the entire expense of switching and loading or unloading; this clause to cover the track known as the "whiskey" track.

Second. For each loaded freight car hauled over the road of the said first party the said second party is to pay to said first party two (2) dollars, no charge being made for empty cars to be returned loaded or for empty cars that may have been or may be loaded one way. It is understood and agreed that the said first party is to do all the switching and handling of cars and freight in Peoria without additional charge, except as hereinafter provided.

Third. It is understood and agreed that the said first party is to furnish standing room in its round-house in Peoria for the engines of the said second party used in this business and to furnish water for the same without charge; the said second party to put its own engines into the house, and wipe and care for them.

Fourth. It is further agreed that the said first party shall
125 handle all rolling freight, incoming and outgoing, at its freight-house, in Peoria, for said second party, and unload the said second partie's cars as necessity may require, and at all

times exercise the same care and promptness in handling such property as is given to traffic of a like character of its own.

It is understood that this rolling freight is limited to such as may pass through the freight-house of the said first party, the compensation for which service the said second party is to pay to the said first party twenty (20) cents per net ton of 20,000 pounds.

Fifth. It is understood and agreed that the said first party is to furnish an office and transact the freight business in Peoria and furnish bill clerks and operator for the use of the joint business without charge, and that the said first and second parties, jointly, are to pay each one-half of the salary of the joint agent, said agent to be satisfactory to both parties.

Sixth. As to passenger business the said first party agrees to furnish to the said second party passenger waiting-rooms and
126 ticket office, for the joint use of the parties, in the Union depot in Peoria, and to make up the trains of the said second party in the said city of Peoria, the said second party to haul its own passenger trains with its own engines and to pay for the facilities furnished by the said first party twenty-five (25) cents for each regular-paying passenger traveling on the trains of the said second party between Pekin and Peoria and Peoria and Pekin; this is understood to include all through business to and from Peoria, excursion passengers and passengers at reduced rates to be proportionately less, it being understood that the said second party is to sell tickets at its office in Pekin to Peoria, the said first party furnishing said tickets at rates to be determined upon by said first party. The said second party shall have the right to carry upon its passenger trains baggage, express, and mail, and retain the revenue collected for the same and make no account to the said first party therefor. It is further understood and agreed that each party is to work for the joint business, passenger and freight, and to sell tickets over each other's roads.

Seventh. It is further understood and agreed that the said
127 first party is to furnish in the Union passenger depot in Peoria an agent to sell tickets and to check baggage, also watchmen and all employees necessary for said second party in Peoria, and that the said second party is to pay the said first party twelve ($12) dollars per month for the said service for each round-trip passenger train per day.

Eighth. It is further understood that the said second party is not to do either freight or passenger business at any intermediate points between Pekin and Peoria, nor any local freight business between the said cities.

Ninth. Settlements of accounts to be made monthly on or before the twenty-fifth (25) day of the month following the month in which the service is performed, and payments to be made by each party immediately upon the passage of the accounts.

Tenth. Said second party shall pay all lawful damages for live stock killed by its trains, and for such damage to persons and property caused by such trains, and for violation of municipal ordi-

nances by them, unless said liability shall be caused by the fault of the said first party.

Eleventh. It is understood and agreed that the running of trains between Pekin and Peoria is to be under the supervision of the said first party; it is further understood that the superintendent
128 of each road shall jointly construe this contract in a spirit of fairness towards each other, and shall determine the details for carrying out the same.

Twelfth. This contract shall take effect and be in force on and after March 10th, 1879, and during the mutual agreement of the parties.

In witness whereof the parties hereto have executed this contract in duplicate.

(Signed) PEKIN, LINCOLN & DECATUR R'Y CO.,
By C. R. CUMMINGS, *Pr.*
THE CHICAGO, PEKIN AND SOUTH-WESTERN R. R.,
By F. E. HINCKLEY, *Receiver.*

129 "EXHIBIT C."

This indenture, made this first day of February, A. D. 1881, between Amos L. Hopkins, receiver of the Peoria and Springfield Railroad Company, duly appointed such receiver by the circuit court of Peoria county, Illinois, and who contracts herein as such receiver and not otherwise, party of the first part, and the Peoria and Pekin Union Railway Company, a railroad corporation of said State, party of the second part, witnesseth:

SEC. 1. That the said first party hereby demises and leases to said second party for the period of one year from the date hereof, unless this lease be sooner terminated, as hereinafter set forth, all and singular the line of railroad of said Peoria and Springfield Railroad Company as now constructed and in his charge, with all its property, equipment, rolling stock, tools, machinery, main track, side tracks, turn-outs, turn-tables, and round-houses, together with all the appurtenances thereunto belonging, and the exclusive use and enjoyment thereof.

130 SECTION 2. Said second party covenants and agrees to pay said first party as rental for said demised property the sum of twenty-five hundred dollars per month, the rent for each month to be paid said first party on or before the fifteenth day of the next succeeding month.

SECTION 3. Said second party further covenants and agrees that until the termination of this lease it will, at its own expense, keep up and maintain said demised property in as good order and condition as when received by said second party, or in as good order and condition as the same may be put by said first party at any time during the continuance of this lease, and that upon the termination of this lease it will return said demised property to said first party

in like good order and condition as the same is received or may be put by said first party as aforesaid, fire and unavoidable casualities only excepted.

SECTION 4. It is further agreed by and between the parties hereto that prior to the taking possession by said second party of
131 said demised property an inventory thereof and it- condition shall be made and filed in said court, according to the order thereof authorizing the making of this lease.

SECTION 5. If upon the termination of this lease by limitation or otherwise any difference of opinion shall arise between the parties hereto as to the condition of said demised property at the time of the return thereof such difference shall be determined by the award of three disinterested arbitrators, one of whom shall be designated by said first party under the order of said court, one by said second party, and the two so chosen shall designate a third, and their award or the award of any two of them in writing shall be binding and conclusive upon the parties hereto.

SECTION 6. It is further agreed by and between the parties hereto that in case of any sale of said demised property under any decree of said court that this lease shall be thereby terminated, anything hereinbefore to the contrary notwithstanding, and said second
132 party shall thereupon make return of said demised property to said first party, in accordance with the foregoing provisions of this lease in that behalf.

SECTION 7. Said first party shall at all times during the continuance of this lease retain sufficient possession of said demised property to enable him to make, from time to time, such repairs thereof as may be necessary.

SECTION 8. In case said second party shall at any time during the continuance of this lease fail to keep up and maintain the said demised property in accordance with the provisions of this lease, then in that event the said court may, upon the application of said first party or any party in interest in said property, cause the same to be examined by three disinterested persons, to be appointed by the court for that purpose, and in case it should appear to the court by the report of said persons that said second party had failed to keep up and maintain said demised property as required by this lease, then that said first party may declare this lease terminated and
133 at once retake possession of all of said demised property and collect from said second party any and all damages occasioned by reason of the non-performance by said second party of the covenants hereof.

SECTION 9. It is further agreed by and between the parties hereto that in case said second party shall at any time during the continuance of this lease make default in the payment of the said monthly rental at the time or times when the same shall become due and payable as aforesaid, and such default shall continue for the period of fifteen days, then in that case this lease shall, at the option of said first party, immediately become terminated, and said first party may retake possession of all of said demised property in the same manner as though this lease had terminated by limitation.

In witness whereof the said parties have, respectively, executed this lease and one other of like tenor and effect this first
134 day of February, A. D. 1881.

A. L. HOPKINS, [SEAL.]
As Receiver of Peoria & Springfield R. R. Co.

[Seal *B.* & P. U. R'y Co.]

PEORIA & PEKIN UNION RAILWAY COMPANY,
By JOHN B. COHRS, *Vice-President.*
Attest: EDW'D GALE, *Sec't'y.*

Bill to Foreclose.

STATE OF ILLINOIS, } ss:
Peoria County, }

In the Circuit Court. December Term, A. D, 1880. In Chancery.

S. H. THOMPSON *vs.* THE P. & S. R. R. Co.

The foregoing draft of lease between Amos L. Hopkins, receiver herein, and the Peoria & Pekin Union R'y Co. having this day been presented to the court for approval, in conformity with the order heretofore entered herein in that behalf:

It is ordered that said draft be, and the same is hereby, ap-
135 proved, and said receiver is hereby authorized and instructed to execute such lease in duplicate and to proceed to carry the same into effect according to the terms of such lease, such lease to bear date February 1st, 1881, and file one copy thereof with the papers in this cause.

JOHN BURNS, *Judge.*

STATE OF ILLINOIS, } ss:
Peoria County, }

In the Circuit Court of Peoria County, State of Illinois.

I, James E. Walsh, clerk of the circuit court in and for said county of Peoria and State of Illinois, do hereby certify that I have compared the foregoing copy of the lease from A. L. Hopkins, receiver, to the Peoria & Pekin Union R'y Co. and the order of said court approving the original draft thereof, all in the case of I. H. Thompson *vs.* Peoria & Springfield R. R. Co. *et al.*, with the original record thereof remaining in my office, and have found the same to be a correct transcript therefrom and of the whole of such original record.

136 In testimony whereof I have hereunto set my hand and official seal, at Peoria, this eleventh day of July, A. D. 1883.

[OFFICIAL SEAL.] JAMES E. WALSH,
Clerk Circuit Court.

137 United States Circuit Court, Northern District of Illinois.

FARMERS' LOAN AND TRUST CO.

vs.

CHICAGO, PEKIN AND SOUTHWESTERN RAILROAD COMPANY.

In the matter of the claim of the Peoria and Pekin Union Railway Company.

The claim of the Peoria and Pekin Union Railway Company against the receiver of the Chicago, Pekin and Southwestern Railway Company is for the use of track between Pekin and Peoria and in Peoria.

It should be stated, for the information of the master and the court, that Peoria is situated on the west bank of the Illinois river, and that Pekin is situated on the east bank of the Illinois river, about ten miles south of Peoria; that there are two nearly parallel railroad tracks from Pekin to Peoria, one on the east bank of the river from Pekin, crossing the river at Peoria, and the other
138 on the west bank of the river, crossing the river at Pekin.

The track on the west side of the river has been built and in operation fully twenty years and was formerly the property of the Peoria, Pekin and Jacksonville railroad.

The track on the east side of the river was built within the last ten years by the Peoria and Springfield Railroad Company.

The Chicago, Pekin and Southwestern Railroad Company built its line from a connection at Joliet and was running to Pekin about the first of January, 1876, and at that time made a contract with the Peoria and Springfield railroad, a copy of which is hereto attached, marked "Exhibit A," by the terms of which the Peoria and Springfield railroad, with its engines and on its tracks, hauled the loaded cars of the Chicago, Pekin and Southwestern railroad from Pekin to Peoria and from Peoria to Pekin at $4 for each loaded car, with no charge for handling empty cars.

This contract was in force from the fourth of January, 1876,
139 to the first of April, 1877, when the following modification was made and endorsed upon said contract:

"It is agreed between the parties to the foregoing contract that on and after this date the price for handling cars between Peoria and Pekin shall be $3 instead of $4, as mentioned in the third paragraph of the foregoing contract.

"If at any time said second party shall elect to do its own train service between Pekin and Peoria, in that case the rates shall be $2 instead of $3 per car; all other conditions in the foregoing contract to remain the same. Dated April 1st, 1877."

This modified contract remained in force with the Peoria and Springfield railroad until the first of September, 1877, when a contract between the Chicago, Pekin and Southwestern railroad and the Peoria, Pekin and Jacksonville Railroad Company was entered into for doing business between Pekin and Peoria, a copy of which is also hereto attached, marked "Exhibit B."

This contract differs from the other one referred to in this,
140 that it divides the business between Peoria and Joliet on a percentage of earnings. It will be seen by reference to the contract that the Peoria, Pekin and Jacksonville railroad received 25 per cent. of the gross earnings and the Chicago, Pekin and Southwestern railroad 75 per cent. of the earnings between Peoria and Joliet, except on grain, and on it the P., P. & J. R. R. got 5 per cent. of the through rate.

The above contract remained in force until the tenth day of March, 1879, at which date the Peoria and Springfield railroad had passed into the hands of the Pekin, Lincoln and Decatur railroad by lease, and the Chicago, Pekin and Southwestern railroad had passed into the hands of a receiver, and a new contract was made, a copy of which is attached to the deposition of John B. Cohrs, filed herein and marked Exhibit "B" thereto, by the terms of which contract it will be seen that the Pekin, Lincoln and Decatur road was to receive $2 per car between Pekin and Peoria for loaded cars and empty cars were to go free, and the said Pekin, Lincoln and Decatur
141 road was to do all the switching and handling of cars in Peoria without additional charge.

This contract remained in force and the business of the Chicago, Pekin and Southwestern railroad was done between Pekin and Peoria under this agreement until after the appointment of A. L. Hopkins receiver of the Peoria and Springfield, which terminated the lease of the Pekin, Lincoln and Decatur road, and as a consequence the contract with the Chicago, Pekin and Southwestern railroad, and a new contract was made by which the Chicago, Pekin and Southwestern railroad was to pay $2.50 per car between Pekin and Peoria.

This arrangement remained in force until the first of February, 1881, at which date the Peoria and Pekin Union railroad was organized and commenced doing business and took into its possession both of the tracks leading from Pekin to Peoria, as well as the terminal facilities belonging to both companies at Peoria; and the controversy in this matter is as to the payment for the use of the
142 tracks between Pekin and Peoria and the terminal facilities from the first of February, 1881, to the 28th of February, 1882—thirteen months.

At the time the P. & P. U. R'y commenced doing business S. B. Reed was operating the Chicago, Pekin and Southwestern railroad as receiver. The Peoria and Pekin Union Railroad Company demanded that Reed, the receiver, should pay, first, a fixed charge of $22,500 per year, and, additional, switching and terminal charges in Peoria for the right and privilege of using the tracks of P. & P. U. R'y.

This the said Reed, receiver, declined to do, claiming, as we understand it, that the amount demanded by the said Peoria and Pekin Union railway for the use of its tracks was exorbitant and that he could not afford to pay it, and that he was unable to agree with the managers of the Peoria and Pekin Union Railway Company for the use of said tracks, but finally the parties made a mutual agreement to submit the matter to the Honorable Thomas Drummond, judge

of the United States circuit court for the northern district of
143 Illinois, and to abide by his decision, the said Reed, receiver, agreeing to file a petition for instruction in the premises, which petition was duly filed, and a copy of which is hereto attached, marked Exhibit "C."

Pending the determination of the matter by Judge Drummond the said Reed was to pay the same as he had been paying, to wit, $2.50 per car, and it is conceded that the payments have been made in accordance with that agreement.

The question then undecided is: Shall the receiver now be discharged from further payments?

This matter was submitted by the petition of S. B. Reed, receiver, on the 28th of March, 1881. At that time the late L. G. Pratt was acting as attorney for the said Reed, and submitted to the court a brief of his understanding of the case and his reasons why Receiver Reed should not be called upon for further payment, which brief is hereto attached, marked Exhibit "D."

The same reasons that existed at that time for the release
144 from any liability to further payment by the receiver of the Chicago, Pekin and Southwestern railroad exists to-day, and as only a little over a month of the time of the controversy had then passed, and the whole thirteen months having now expired, I submit the result of the business during the thirteen months and hereto attache a tabulated statement, marked Exhibit "E," showing the number of loaded cars each month, the amount, at $2.50 per car, the number of passenger and baggage cars, at $2.00 for each car, the amount of merchandise handled, and certain other miscellaneous items paid, showing a total of $17,537.83 as the amount of money paid by Receiver Reed to the Peoria and Pekin Union road. This payment, it should be borne in mind, is in full, in accordance with the arrangement in existence at the time the Peoria and Pekin Union railway took possession of the tracks.

For the purpose of showing what might be an equitable charge
I make a statement, derived from the books of S. B. Reed,
145 receiver, showing the entire earnings, from all sources, of the said Reed, from business interchanged with the Peoria and Pekin Union railroad during the thirteen months in controversy, as follows:

February, 1881	$3,610 71
March	4,679 46
April	4,056 72
May	7,878 49
June	7,564 88
July	5,112 08
August	5,025 19
September	5,245 59
October	5,059 77
November	3,369 40
December	3,665 08

January, 1882	3,199 36
February	4,186 09
Total	$62,652 82

If this earning was divided on the basis of the contract with the Peoria, Pekin and Jacksonville railroad hereinbefore referred to—that is, giving to the Peoria and Pekin Union railway 25 per cent. and to Reed, receiver, 75 per cent., it would give said Peoria and Pekin Union railway $15,663.20. It will be seen that the payment which has been made of $17,537.83 is largely in excess of 25 per cent.

It should be borne in mind that the distance from Joliet to
146 Pekin is 115 miles, while the distance from Peoria to Pekin is only ten miles. A division of earning according to mil-age would give to S. B. Reed $57,600.48 and to the Peoria and Pekin Union railway $5.052.34.

It should be borne in mind that in this business between the Peoria and Pekin Union railway and the Chicago, Pekin and Southwestern railroad that the said Peoria and Pekin Union railway furnished nothing but tracks, and the Chicago, Pekin and Southwestern railroad, Reed, receiver, furnished all of the cars, free of mil-age and care for and repair of the same, and furnished all of the engines and kept the same in repair and in fuel and water and everything of that kind, and in addition thereto furnished all the men, including conductors, brakemen, engineers, firemen, wipers, and all other employees required for the obtaining of the business and the management of and doing the same.

It is admitted by the Peoria and Pekin Union railway that all their bills for the handling of merchandise in Peoria have
147 been paid and certain bills for shop repairs that have been rendered have been paid, leaving the balance which the Peoria and Pekin Union railway divide, as claimed by the said John B. Cohrs in his deposition, between switching of cars, maintenance of track, and rental of track.

First, as to switching, it will be seen that the charge is $5,318.80 for switching 5,693 cars, or a trifle less than a dollar per car.

This is undoubtedly very largely in excess of the cost of switching the cars. A single locomotive with its crew—engineer, firemen, and switchmen—costs, including fuel and water, to maintain it about $15 per day, and such an engine and crew ought to switch at least one hundred cars per day. These figures are sustained by the experience of handling cars in Chicago.

It is stated by the parties having charge of the switching of cars on the Chicago and Alton railroad and the Chicago, Burlington and Quincy railroad in Chicago that it costs 15 cents per car for switching cars in the city of Chicago; there is no reason why it should cost more in Peoria.

148 I think that an analysis of the cost of maintenance would show an overcharge similar to that of switching. An estimate of the value of the facilities used by Reed, receiver, in this case

perhaps may be approximated by reference to what is paid in similar cases; for instance, the Chicago, Burlington and Quincy Railroad Company furnish tracks from Aurora to Chicago, 38 miles, and furnish engines and trains and men to operate the trains and haul the loaded cars of the Illinois Central railroad from Aurora to Chicago and from Chicago to Aurora for $1.25 per car.

The Chicago and Iowa railroad hauls the same cars of the Illinois Central railroad, 80 miles, furnishing tracks, engines, men, and everything, for $3.75 per car.

Numerous other instances of similar charges for track service at no greater rate of compensation might be mentioned.

By the statement of the Peoria and Pekin Union Company under consideration it will be noticed that the Wabash, St. Louis and Pacific railway handled into and out of Peoria during the
149 period under consideration 127,431 loaded and empty freight cars and passenger and baggage cars; Reed, receiver, handled at the same time 9,853 cars in all, and yet it is proposed by the Peoria and Pekin Union Railway Company to charge Reed, receiver, the same amount of money, to wit, $24,375, that they charge the Wabash, St. Louis and Pacific railway for rental; in other words, it is proposed to charge Reed, receiver, $2.48 as rental per car, and only charge the Wabash, St. Louis and Pacific railway 19 cents per car as rented.

It is not claimed by the Peoria and Pekin Union Railway Company that it had any agreement with Reed, receiver, for paying any greater sum than said Reed was paying for similar service at the time. Reed, having paid according to the agreement at the time the P. and P. U. R'y took possession, should be discharged from further payment.

150 The only further agreement that exists between the parties to this controversy is that if, in the judgment of Judge Drummond, a greater amount should be paid that Judge Drummond should state that amount, and the receiver should pay it. It is presumed that Judge Drummond, not being bound to decide this matter by the terms of any agreement between the parties, will decide it upon a *quantum meruit* rule or upon the basis of fairness and equity between the parties, and with this mode of disposing of the matter we are content.

Great stress in the presentation of this matter is laid upon the fact that the Peoria and Pekin Union railway could not make a different contract with Reed, receiver, than it had with the other roads; but this goes for nought when it is considered that its other contracts are with its own stockholders, and they only take from one pocket and put into the other, and that the Chicago, Pekin and Southwestern railroad or Reed, receiver, has no property in the Peoria and Pekin Union railway which is to be bene-
151 fited by the payment of a large rental.

The four lessee roads owning the Peoria and Pekin Union railway might contract with themselves to pay to the Peoria and Pekin Union Railway Company $100,000 per annum as rental, and pay the same to-day and to-morrow come in and get a dividend of

90 per cent. That contract might contain a clause that they should not contract with an outside road for less than $100,000.

It is a fact that while the rental paid to the Peoria and Pekin Union railway by any other than the four constituent companies goes directly to the Peoria and Pekin Union treasury, yet, as a matter of fact, all such rental goes to the direct benefit and is shared by each of the four lessees.

It is now claimed on behalf of the P. & P. U. R'y that the P. & P. U. Company furnished very much larger facilities to Reed, receiver, than he had received formerly under the contracts with the Peoria and Springfield Railroad Company and the Peoria, Pekin
152 and Jacksonville Railroad Company, and that large additions had been made to the terminal facilities in Peoria.

For the accommodation of the small amount of business done by Reed, receiver, it was necessary to use both tracks between Pekin and Peoria and unnecessary to use the additional terminal facilities, but the additional facilities spoken of as belonging to the Peoria and Pekin Union railway were necessary for the accommodation of the other lessees.

By a computation it will be seen that the Wabash road handled 127,431 cars into and out of Peoria during the thirteen months. Dividing this by the number of working days in that time it will be seen that the Wabash road handled an average of 381 cars per day. In order to handle this large number of cars it was necessary to give the Wabash road a larger space on the side tracks in Peoria, and it became necessary, in the judgment of the general manager of the P. & P. U. R'y, to restrict Reed, receiver, in the use of the
153 facilities, which he did at different times, but notably on March 31st, 1881, two months after the commencement of the term under consideration. The following is a copy of a letter which is in sharp contrast with the argument of the P. & P. U. R'y at this time:

PEORIA AND PEKIN UNION RAILWAY COMPANY,
GENERAL MANAGER'S OFFICE,
PEORIA, ILLINOIS, *March* 31, 1881.

J. Murray, Esq., sup't Chicago, Pekin and Southwestern R. R.

DEAR SIR: Beginning to-morrow, April 1st, this company will only furnish room on side tracks for 25 of your empty cars of all descriptions.

This is positively the maximum number of empty cars that our tracks can accommodate for your company. Will you, therefore, please arrange to remove all empties above 25 from Peoria yards and side tracks at once?

This number of cars is amply sufficient to cover all orders for several days ahead, and, in order that we may have room
154 enough to transact business for all concerned, we must insist that this rule be complied with in the future.

Our record to-day shows that your company has 67 cars of all kinds on our tracks.

Very truly,

R. STEWART,
Gen. Manager.

Mr. Reed, receiver, in forwarding this letter to L. G. Pratt, his attorney, complains bitterly of the treatment of the P. & P. U., and says, "You will see that another turn on the screws has been made."

It is not honest, equitable, or reasonable to charge and demand and expect a court of equity to compell the same rental to be paid by Reed when he was positively restricted in the use of the tracks to 25 cars per day, while the Wabash handled an average of 381 cars per day.

There are no reasons why Reed, receiver, should pay more for use of tracks between Pekin and Peoria from February 1st, 1881, to February 28th, 1882, than was paid for similar facilities from
155 January 1st, 1876, to February 1st, 1881, and having already paid more in fact than for the preceding period no additional amount in equity should now be paid.

It is not equitable or reasonable that Reed, receiver, should pay $2.48 per car for rental of these tracks while the Wabash road is only charged 19 cents per car; this is made more apparent when it is understood that the payment attempted to be extorted from Reed, receiver, is to go to the benefit of the Wabash road and the other lessees.

I have not thought it necessary to refer to the smaller details of the matter under consideration—that is, the selling of tickets, checking of baggage, and handling of freight through the warehouse, and matters of this kind—as there was but little difference in the aggregate during the period of this controversy and the former period, not sufficient to take the time of the court to investigate.

Comparisons between the business of Reed, receiver, and the business of the I., B. & W., P. P. & J., and P., D. & E. might be
156 instituted. While they would not show a contrast so great as in the case of the Wabash, yet in every case it would show that all of the other roads did a very much larger business than the Chicago, Pekin and Southwestern railroad.

Having shown that Reed had paid more than was paid for former periods by fixed charges; also having shown that Reed paid more than was paid during the period when the Peoria road received 25 per cent.; also having shown that Reed was restricted in the use of the terminal facilities; having shown that there was no contract fixing the amount Reed was to pay, and having shown in comparison that the amount which he has paid is in excess of amounts paid in similar cases, and having shown that he has paid a fair, equitable, and reasonable compensation, we leave the matter for the action of the court.

March 17th, 1883.

F. E. HINCKLEY.

Subscribed and sworn to before me this 18th day of July, A. D. 1883.

H. W. BISHOP,
Master in Ch'y.

157 EXHIBIT A.

This agreement between the Peoria and Springfield Railroad Company, of the first part, and the Chicago, Pekin and Southwestern Railroad Company, of the second part.

That for the purpose of enabling the second party to extend the business of its lines by way of Pekin to Peoria the parties hereto have agreed upon the following terms and stipulations, to wit:

1st. The second party to be allowed to extend its business—freight, express, mail, and passenger—into Peoria over the first party's railroad between Pekin and Peoria, saving only that the first party reserves to itself all local freight business between Pekin and Peoria and Peoria and Pekin.

2nd. In conducting the freight business the freight cars of the second party and those in their use shall be hauled both ways over said part of first party's railroad by the motive power of said first
158 party, but the passenger trains shall be hauled by the second party's own motive power.

3rd. The freight cars and trains of said second party shall be taken from the transfer track of said first party in Pekin and delivered at the freight house or station of the first party in Peoria and *vice versa*, at the price of four — ($4.00) for each and every loaded car of twenty thousand (20,000) pounds (except lumber, which shall be at the rate of thirteen (13) per cent. of the through rate as given by said second party), with no extra charge for any amount in excess of 20,000 lbs; all amounts less than car-load lots to be consolidated into car-loads of 20,000 lbs. each, with no charge for hauling empty cars, but no empty cars shall be sent to Peoria except such as are in good faith intended to be loaded and brought back to Pekin and then delivered to said second party.

4th. The first party will do all the switching at Peoria, tak-
159 ing the second party's cars from the freight station or main track, and place them at any elevator, distillery, malt-house, or other usual or accessible place in Peoria for receiving and delivering freight, but any customary charges made by other railroad companies for the use of any portion of such other companies' tracks must be borne by said second party.

5th. The party of the first part shall handle all rolling freight incoming and outcoming at its freight-house in Peoria and Pekin for said second party, load and unload second party's cars as necessity may require, and at all times exercise the same care and promptness in handling such property as is given to traffic of like character of its own, the second party to furnish all clerical force and general agents at their own cost, it being understood that the first party only furnishes freight-house room, track, scales, office room, warehouse-
men, watchmen, and check clerks necessary for handling
160 such freight (it is understood that this rolling freight is limited to such as may pass through the house), compensation for which services the said second party are to pay to first party twenty (20) cents per net ton of two thousand pounds.

6th. As to passenger business the first party agrees to furnish suitable passenger station and ticket office for the joint use of the parties in Pekin and Peoria, to afford standing room for passenger trains on its tracks in Pekin and Peoria, and round-house room for the necessary passenger engines of the second party in Peoria. The second party is to haul its own passenger trains with its own engines and is to pay for the facilities afforded by first party twenty-five (25) cents for each regular-paying passenger traveling on its trains of the second party between Pekin and Peoria and Peoria and Pekin; this is understood to include all through passengers to and from Peoria, excursion passengers and those at reduced rates to be proportionately less.

161 8th. The time tables for the government of all trains between Pekin and Peoria shall be arranged by the first party, but so as to accommodate as far as possible the connections of the second party with its own time tables at Pekin, and causing no delay to second party's trains when it is possible to avoid it; fifteen minutes between times of starting trains from Peoria or Pekin shall be regarded as a reasonable interval, and all arrangements are to be made in good faith for the fairest and best accommodations of all parties alike.

The train despatcher of the first party shall direct the movement of all trains between Pekin and Peoria, subject to the general understanding herein expressed, and the relative rights of all trains or the track shall be determined, according to the usual rules applying to the several classes of trains, as if they were all the trains of the same company.

The train dispatcher shall act as the disinterested representative of all parties.

162 9th. It is understood that full access to all the tracks and switches, yard-room, &c., including depots and warehouses at Peoria and Pekin, is accorded to the second party as fully as the first party has the same, so that the business may be done by the second party with all elevators, warehouses, mills, distilleries, malthouses, and other places of business to which the first party has or may have access, without charge to the second party, except as specified herein.

10th. The second party is to pay to the first party at the rate of fifty (50) dollars per annum for each engine taking water at the round-house of said first party in Peoria.

11th. Settlements between the parties shall be made monthly and balances paid over promptly on such settlements, which shall not be later than the 25th of the month following the month in which the service was performed.

163 12th. This contract shall be for the term of ten years from the date hereof, unless sooner revoked by mutual consent; either party may terminate this contract and lease by giving six mont-s' notice in writing, to be given to the other party, the second party to be kept on terms as favorable as are or may be accorded to any other company or railroad.

13th. It is understood that the second party is to carry on its

trains between Pekin and Peoria, and *vice versa*, the express, freight, and packages of any express company and United States mail free of all cost or charge soever to said second party by said first party.

In witness whereof the parties hereto have, this fourth day of January, A. D. 1876, caused their corporate names to be hereto subscribed by their respective presidents and their corporate seals to be hereto attached and attested by their secretaries.

[Seal P. & S. R. R. Co.]

PEORIA AND SPRINGFIELD RAILROAD COMPANY,
By JAMES HAINES, *Its President.*

Attest: D. T. THOMPSON, *Sec'y.*

164 THE CHICAGO, PEKIN & SOUTHWESTERN R. R. CO.,
By F. E. HINCKLEY, *President.*

The above contract approved by me—

JAMES HAINES,
Receiver P. & S. R. R.

It is agreed between the parties to the foregoing contract that on and after this date the price for hauling cars between Peoria and Pekin shall be three $\frac{00}{100}$ ($3.00) dollars instead of four $\frac{00}{100}$ ($4.00) dollars, as mentioned in third (3rd) paragraph of foregoing contract.

If at any time said second party shall elect to do its own train service between Pekin and Peoria, in that case the rate shall be two $\frac{00}{100}$ ($2.00) dollars instead of three $\frac{00}{100}$ ($3.00) dollars per car; all other conditions in the foregoing contract to remain the same.

Given under our hands this first day of April, 1877.

PEORIA AND SPRINGFIELD RAILROAD COMPANY,
By JOHN L. HILLIARD, *Receiver.*
THE CHICAGO, PEKIN & SOUTHWESTERN R. R. CO.,
By F. E. HINCKLEY, *Pres't.*

165 "EXHIBIT B."

Memorandum of an agreement made and entered into this first day of September, A. D. 1877, by and between the Peoria, Pekin & Jacksonville Railroad Company, of the first part, and the Chicago, Pekin and Southwestern Railroad Company, by F. E. Hinckley, its president and receiver, party of the second part, witnesseth:

That the said parties hereto enter into this agreement for the purpose of doing a joint freight and passenger business between Chicago and points east of Joliet and points on the line of the second party's road between Chicago and Pekin and points on the line of the first party's road between Peoria and Jacksonville.

The said second party agrees to deliver to the first party all its business destined for Peoria and other points on the road of the first

party and its connections at Pekin, and there to receive from said first party all the business designed for points on the road of
166 said second party or its connecting lines in Chicago and all points east of Joliet.

The said first party agrees to take all business delivered to it at Pekin and deliver the same at its destination at Peoria and other points along the line of its said road or to its connections.

And the said first party also agrees to receive business from its connecting lines and from all points on its own line for points on the line of said second party and its connecting lines and Chicago, and to deliver the same to said second party at Pekin.

That each party is to have the right and be authorized to make rates for both freight and passenger business to points on the line of the other partie's road and to points reached by its connections, excepting as hereinafter provided, the other party agreeing to carry out in good faith, and such contract made by either party, it being understood that both parties shall maintain agreed rates. Each party hereby agrees to handle the joint business promptly and give
167 it the same dispatch as its own local business, and also to use its best efforts to build up and to perform all acts and things necessary to facilitate the joint business.

It is understood that the cars of both parties shall be employed for the joint business, excepting that the through business going off the road of both parties is to be done in line cars so far as possible.

Each party shall keep an accurate account of the milage run by said cars in the joint business and pay to the other the customary milage rates.

The said first party agrees to build and maintain a suitable freight and passenger — in Peoria, separate and distinct from the Chicago, Rock Island and Pacific road, and do all in its power to build up and increase the joint business from Peoria.

The first party to furnish engine-house room for the necessary passenger engines of the second party at Peoria when said second party shall run its engines to Peoria; the said first party is
168 to haul the passenger trains of the said second party over the road of said first party between Pekin and Peoria, provided the running time of said second party's trains corresponds with the running time of said first party's regular trains, but if not then said second party is to haul its own passenger trains over the road of said first party between Pekin and Peoria with its own engines, and said second party is to pay for the facilities accorded to its passenger, mail, and express business by said first party as aforesaid the sum of twenty-five cents for each full-paying passenger traveling on the train of said second party in either direction between Pekin and Peoria, and the same proportion for each passenger at reduced rates, and for the mail and express the said second party is to pay to the said first party the same sum and price as the said second party receives from the United States mail department and the express company for said service between Pekin and Peoria.

169 The time tables and details of the running of the trains

between Pekin and Peoria shall be agreed upon from time to time between the superintendents of the roads to the parties hereto.

The agreement in respect to the division of the joint earnings is as follows:

All business originating on the line of either party's road for points on the line of the other party's road—that is, business local to either party—shall be divided by giving to each party its local rate, unless otherwise changed by written consent and agreement of the parties hereto, joint traffic to be agreed upon between the parties.

The earnings on all business originating on the said first party's road, excepting Peoria, destined for Chicago or Joliet shall be divided as follows:

The said first party to receive forty-five (45) per cent. of the through rate and said second party fifty-five (55) per cent. of the through rate.

And all business received at Chicago or Joliet for points on the first party's road, excepting Peoria, shall be divided as follows:

170 The party of the first part shall receive forty (40) per cent. and the party of the second part sixty per cent. of the through rate.

The earnings on all business from Peoria to Chicago and points east of Joliet, also business from Chicago and points east of Joliet to Peoria, to be divided as follows, to wit:

Said first party to receive twenty-five per cent. of the earnings between Joliet and Peoria (meaning by this that the arbitrary — paid the Chicago and Alton Railroad Company, which is now ($5) five dollars per car between Joliet and Chicago, but may hereafter be modified, is to be first taken out of the gross earnings between Chicago and Peoria), said second party to receive (75) seventy-five per cent. of said earnings between Joliet and Peoria, grain business excepted, the compensation to be accorded by the party of the second part to the party of the first part on grain business from Peoria to be five (5) per cent. of the through rate; the earnings

171 on all grain business from Havana destined to points east of Joliet, viz., to seaports or common line points, to be divided so as to give the first party (10) — per cent. of the through rate.

The earnings on all business originating east of Joliet and destined to points on line of said first parties road, excepting Peoria, Havana, Virginia, and Jacksonville, to be so divided as to give said first party its local rates, and on business originating east of Joliet at se-port or common line points, destined to Havana, Virginia, and Jacksonville, the first party is to receive ten (10) per cent. of the through rate.

Settlements between the parties shall be made monthly and the balances paid over promptly on such settlements, which shall not be later than the 25th day of the month following the month in which the business was done, but approximate balances may be drawn for weekly by either party.

To facilitate the transfer of the joint business at Pekin be-

172 tween the two roads it is mutually agreed that each party shall have the right to go with its engines and men upon the tracks of the other party for the purpose of delivering to it or receiving from it cars loaded or unloaded used in the joint business.

For the purposes of this contract it is necessary that the tracks of the two parties hereto be connected by a Y, known as the South Y, crossing the I., B. & W. track from Market square to Third street. It is agreed that this Y, with double tracks, if it shall be so arranged, shall be built, together with all the appurtenances and expense connected with it, jointly and equally, and owned and maintained equally by each party.

This contract shall be for the term of ten (10) years from the date hereof, unless revoked by mutual consent, but either party may terminate this contract by giving six months' notice in writing to the other party.

In witness whereof the parties hereto have caused this
173 contract to be signed by the respective — the day and year first above written, to take effect on or before the first day of October next.

[Seal P., P. & J. R. R. Co..]

(Signed) PEORIA, PEKIN & JACKSONVILLE RAILROAD COMPANY,
By JOHN ALLEN, *President.*

Attest: WM. C. PHILLIPS, *Sec'y.*

[Seal C., P. & S. W. R. R. Co..]

THE CHICAGO, PEKIN & SOUTHWESTERN RAILROAD CO.,
By F. E. HINCKLEY, *President,*
And by F. E. HINCKLEY, *Receiver.*

Attest: P. B. SHUMWAY, *Sec'y.*

174 "EXHIBIT C."

UNITED STATES OF AMERICA, *Northern District of Illinois:*

In the Circuit Court of the United States for said District. In Chancery.

FARMERS' LOAN AND TRUST COMPANY
vs.
CHICAGO, PEKIN AND SOUTHWESTERN RAILWAY COMPANY.

To the Honorable Thomas Drummond, judge of said court:

The petition of Samuel B. Reed, receiver in the above-entitled cause, respectfully represents—

That as such receiver he has been and now is using and occupying the Peoria and Springfield railroad from Peoria to Pekin as part of the line of the Chicago, Pekin and Southwestern railroad to Peoria, and has also been paying to the Wabash Railway Company certain terminal charges for hauling freight and a proportion of rent of depot and for passenger agent at Peoria.

175 That on February 1st, A. D. 1881, all the railway tracks between Peoria and Pekin, together with all the terminal facilities in Peoria and Pekin used by your receiver, became, as your receiver is advised, the property of the Peoria and Pekin Union Railway Co., which company now proposes to make an arrangement with your receiver for the continued use of the track from Pekin to Peoria and for all necessary terminal facilities in Peoria.

That your petitioner has been in negotiation with the managers of the Peoria and Pekin Union Railway Co. concerning the terms and conditions of such continued use, but has been unable to agree with said managers concerning the same.

That because of such failure to agree upon said terms and conditions the parties have mutually made the following agreement, in substance, to wit:

"Chicago, Pekin and Southwestern Railway Co. to have the same rights of the Peoria and Pekin Union railway tracts that are given to the several lessees within the eighth section of the contract
176 between the Peoria and Pekin Union Railway Co. and the lessees, and the Chicago, Pekin and Southwestern Railway Co. to pay for the terminal services and facilities the same the lessees pay, the fixed charge per month to be determined by Judge Drummond on an application to be made to him for that purpose by the receiver of the Chicago, Pekin and Southwestern railway upon notice to the Peoria and Pekin Union Railway Co., and to be made within thirty (30) days from March 15th, A. D. 1881; such fixed charge to be made, when determined by Judge Drummond, from February 1st, A. D. 1881, and until such determination the Chicago, Pekin and Southwestern Railway Co. to pay charges as now made; residue, if any, to be paid when Judge Drummond shall so determine."

Wherefore your petitioner prays that your honor will examine into the matter and determine for your receiver the rental to be paid by him to said Peoria and Pekin Union Railway Company.

And as in duty bound your receiver will ever pray, etc.

177 S. B. REED, *Receiver.*

LORIN GRANT PRATT,
Solicitor for Receiver.

STATE OF ILLINOIS,
Northern District of Illinois, County of Cook, } ss:

Samuel B. Reed, receiver of the Chicago, Pekin and Southwestern railway, being first duly sworn, says that he has heard read the foregoing petition by him above subscribed and knows the contents thereof, and that the same is true as deponent verily believes; and further says not.

S. B. REED.

Subscribed and sworn to before me this 28th day of March, A. D. 1881.

CHARLES B. McCOY,
Notary Public.

178 EXHIBIT D.

Suggestions for the Receiver of the Chicago, Pekin and Southwestern Railway.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

In the Circuit Court of the United States for said District. In Chancery.

FARMERS' LOAN AND TRUST COMPANY
vs.
CHICAGO, PEKIN AND SOUTHWESTERN RAILWAY COMPANY *et al.*

In the matter of the proposed lease from the Peoria and Pekin Union Railway Company.

To the Honorable Thomas Drummond, judge of said court:

Up to Feb'y 1st, 1881, the "C., P. & S. W. R. R." paid for the use of the railway track from Pekin to Peoria according to wheelage—*i. e.*, a certain agreed price per car for all cars transported over the road, and for all terminal facilities in Peoria, including the handling of its freight, it paid a certain agreed price for the privileges used by and for the services rendered to it.

Upon this agreed basis of paying according to the business done (and which I assume was a fair one) the C., P. & S. W. R. R., from September 9th, 1879, to Feb'y 1st, 1881, paid for rental of track
179 from Pekin to Peoria and for its terminal facilities and services in Peoria the following monthly payments, to wit:

For month of September, 1879 (Sept. 10th to Sept. 30th, inclusive)		$244
" October, 1879		418 20
" November, "		469 55
" December, "		460 98
" January, 1880		424 74
" February, "		487 04
" March, "		820 49
" April, "		854 23
" May, "		1,517 49
" June, "		876 77
" July, "		759 76
" August, "		1,212 33
" September, "		1,285 51
" October, "		1,839 85
" November, "		1,193 20
" December, "		1,019 84
" January, 1881, about		1,000 00

On Feb'y 1st, 1881, the "Peoria and Pekin Union Railway Company" became possessed of all the tracks between Peoria and Pekin and of all the terminal property and facilities in Peoria, whereupon

it proposed to the receiver to lease to him for the period of his receivership the use of the railroad track from Peoria to Pekin, together with terminal facilities and services in Peoria (according to the provisions of its form of lease herewith submitted), being upon the following terms, to wit:

180 1st. A fixed yearly rental of $22,500.00, and in addition thereto—

2nd. The proportion, according to use, of all expenses of maintainance, renewal, and keeping in thorough repair the main tracks, sidings, passenger depot, approaches and facilities, freight and round houses, and all other of the leased property, excepting the tracks lying within the yards at Peoria and Pekin.

3rd. In case of the building of a contemplated "Union depot" at Peoria, then for all passenger, mail, and baggage cars entering such depot such reasonable price per car as shall be fixed by the lessor.

4th. Reasonable compensation for all transfer service at Peoria, to be fixed by the lessor.

5th. Reasonable compensation for handling and switching all cars at Peoria, to be fixed by the lessor.

The receiver has not accepted the proposition of the Peoria Union Railway Co., nor can he recommend its acceptance.

Not being able to accept or recommend to your honor the acceptance of the proposal aforesaid, the receiver, after considerable negotiations with the Peoria & Pekin Union Railway Co., finally

181 agreed with it that the C., P. & S. W. R. R. should, for the term of the receivership, use the tracks and terminal facilities under the provisions of said form of lease, except that your honor should, upon consideration of the facts and circumstances, determine the amount to be paid by the receiver therefor.

To this end the receiver has presented his petition praying that your honor may hear and determine the matter.

As pertinent to the questions thus submitted I suggest—

First. I assume that the rate heretofore paid by the C., P. & S. W. R. R. for rental of tracks and for terminal facilities and services, being an agreed rate and upon the basis of paying for actual use, was a fair one. At that rate, paying for all it used and had, the monthly payments ran from $418.20 to $1,839.85, and from October 1st, 1879, to January 1st, 1881, a period of fifteen months, aggregated the sum of $13,639.98, or an average of a little over $900.00 per month. This was upon the basis of actual use, or, as the railroad men say, "according to wheelage." It will be noted in this connection that the amount paid for the latter months has averaged about $1,000.00 per month. This sum of $1,000.00 per month is therefore a fair compensation for all the rights and privileges the road requires or can use.

Second. Prior to the appointment of Hopkins as receiver

182 of the Peoria and Springfield railroad the C., P. & S. W. R. R. paid for use of track from Pekin to Peoria at the rate of $2.00 for each loaded car and passenger coach. Since Mr. Hopkins' appointment the receiver has paid at the rate of $2.50 for each loaded car and $2.00 for each passenger coach and baggage car and 20c. p r

ton for handling the freight through the warehouse. At these rates the business has amounted to the monthly sums hereinbefore stated. The bill of the Peoria & Pekin Union Railway Co. for the month of February, 1881, has just been rendered at these prices and amounts to $986.00.

Third. The proposed lease would require the road to pay $1,875.00 per month absolutely, and, in addition thereto, its proportion of all repairs and for all services in handling its freight at Peoria, so that the "unknown quantity" might be greater even than that which is known and fixed by the lease.

Fourth. In the opinion of the receiver the present volume of business of the C., P. & S. W. R. R. will not warrant any large increase of expense for rental or terminal facilities. The present proportion of outbound freight from Peoria accorded to the C., P. & S. W. R. R. by the "Peoria pool" is but 5 %, while the T., P. & W. R. R. has 36 % and the I., B. & W. R. R. has 24 % of the same, and these proportions were fixed by the committee of arbitration upon the supposed basis of relative volume of business done by the roads, respectively.

183 Fifth. The Peoria and Pekin Union Railway Co. claims that because it has made leases to four several roads upon the terms proposed to the C., P. & S. W. R. R., and because it has covenanted in those leases that it will not make other or different leases to other parties, that it is under obligations not to let the C., P. & S. W. R. R. do business in Peoria unless upon the terms proposed by it.

There is apparent force in the suggestion, but that force is entirely destroyed by the fact that the Peoria & Pekin Union Railway Co. is jointly, equally, and solely owned and controlled by the same four roads with which it has made these leases. It is simply the case of a man contracting with himself that he will not make a certain other contract. The lease explains all this, besides the objection is in this case waived by the Peoria and Pekin Union Railway Co. under its terms of submission to your honor of this question.

Sixth. The amount of rental to be paid by the four roads, respectively, under their several leases, furnishes no proper basis for the present case, because those leases are for 50 years the fixed rental of $22,500.00 per year, continuing during all that period; these roads contract for a valuable future privilege—one that will be increasing in value yearly, while the receiver can only contract for a

184 temporary present use. They can afford to pay more than the present use is worth because they secure the more valuable use of the property for the long future time.

All of which is respectively submitted.

March 29th, 1881.

LORIN GRANT PRATT,
For the Receiver.

185 EXHIBIT E.

Tabulated Statement of Business to and from Peoria Hauled by C., P. & S. W. R. R. over P. & P. U. R'y, Feb'y 1st, 1881, to Feb'y 28th, 1882, Showing Number of Loaded Fr't Cars, Pass'r & Bagg. Cars, Am't Mdse., &c., in and out of Peoria, and Payment therefor by C., P. & S. W. R. R.

Month.	Loaded fr't cars.		Pass'r & bag. cars.		Mdse. handled in wareh.	Miscellaneous items.	Total.
	No.	Am't @ 2.50 ea.	No.	Am't @ 2.00 ea.			
1881.							
Feb'y 1	303	757 50	96	192 00	36 50	-------	986 00
March 2	314	785 00	72	144 00	43 63	-------	972 63
April 3	414	1,035 00	104	208 00	42 45	-------	1,285 45
May 4	786	1,965 00	104	208 00	36 91	13 25	2,223 16
June 5	744	1,860 00	104	208 00	38 26	-------	2,106 26
July 6	531	1,327 50	104	208 00	27 75	-------	1,563 25
Aug. 7	562	1,405 00	108	216 00	34 76	-------	1,655 76
Sept. 8	402	1,005 00	131	262 00	36 38	-------	1,303 38
Oct. 9	453	1,132 50	104	208 00	79 78	-------	1,420 28
Nov. 10	296	740 00	104	208 00	40 16	3 50	991 66
Dec. 11	321	802 50	108	216 00	78 84	-------	1,097 34
1882.							
Jan'y 12	235	587 50	104	208 00	44 91	-------	840 41
Feb'y 13	332	830 00	96	192 00	56 30	13 95	1,092 25
	5693	14,232 50	1339	2,678 00	596 63	30 70	17,537 83

186 In the Circuit Court of the United States for the Northern District of Illinois, of the July Term, A. D. 1883.

FARMERS' LOAN AND TRUST COMPANY *vs.* CHICAGO, PEKIN & SOUTHWESTERN RAILROAD COMPANY *et al.* } In chancery to foreclose first mortgage.

FARMERS' LOAN & TRUST COMPANY *vs.* CHICAGO, PEKIN & SOUTHWESTERN RAILROAD COMPANY *et al.* } In chancery to foreclose second mortgage.

In the matter of the intervening petition of the Peoria and Pekin Union Railway Company in the above-entitled cause.

I, Thomas Drummond, judge of said circuit court of the United States, do hereby certify that on the 13th day of November, A. D. 1883, one of the regular days of the July term, A. D. 1883, of said court, upon the hearing and trial had before me upon the exceptions filed to the report of the master in chancery of said court in the matter of the intervening petition of the said The Peoria and Pekin Union Railway Company in the above-entitled cause of the Farmers' Loan

and Trust Company against the Chicago, Pekin and Southwestern Railroad Company, the foregoing deposition of John B. Cohrs, together with the exhibits thereto, was introduced and submitted on said
187 hearing on behalf of said petitioner, and the foregoing deposition of F. E. Hinckley, together with the exhibits thereto attached, was introduced and submitted on behalf of the respondents to said petition; and I further certify that the said depositions and exhibits was all of the evidence introduced and submitted on said hearing.

Witness my hand and seal this 28th day of November, A. D. 1883.

THOMAS DRUMMOND, *Judge.* [SEAL.]

Endorsed: Filed Jul. 20, 1883. W. H. Bradley, clerk.

188 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record in the matter of the intervening petition of the Peoria and Pekin Union Railway Company in the cause wherein The Farmers' Loan and Trust Company is the complainant and The Chicago, Pekin and Southwestern Railroad Company *et al.* are the defendants (made under the stipulation and certificate of evidence filed in said cause), as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this first day of April, A. D. 1884.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

WM. H. BRADLEY, *Clerk.*

Endorsed on cover: N. Illinois C. C. U. S. No. 210. The Peoria & Pekin Union Railway Company, appellant, *vs.* The Chicago, Pekin & Southwestern Railroad Co. Filed 6th March, 1885.

27-200

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1887.

No. 210.

THE PEORIA AND PEKIN UNION RAILWAY COMPANY,

Appellant,

against

THE CHICAGO, PEKIN AND SOUTHWESTERN RAILROAD COMPANY.

BRIEF FOR THE APPELLANT.

WAGER SWAYNE,
C. WALTER ARTZ,
Of Counsel.

BURGOYNE QUICK PRINTING CO., Cor. Walker and Centre, New York.

Supreme Court of the United States.

OCTOBER TERM, 1887.

No. 210.

THE PEORIA AND PEKIN UNION RAILWAY COMPANY,
Appellant,

vs.

THE CHICAGO, PEKIN AND SOUTHWESTERN RAILROAD COMPANY.

Argument for the Appellant.

Statement of the Case.

This is an appeal from a decree denying and dismissing an intervening petition praying that the Receiver of defendant be ordered to pay the petitioner $16,231.35, claimed as balance due on account of rental from February 1, 1881, to March 1, 1882, of certain property in Peoria, Illinois, which the Receiver during that period made use of in common with other tenants of the petitioner.

Appellant is a railroad company owning at Peoria a Union passenger depot, freight houses, round houses,

shops, yards, tracks, switches and other terminal property; also two lines of railroad extending from Peoria to Pekin, Illinois, a distance of ten miles, each of them crossing the Illinois River on an extensive railroad bridge. One of these bridges is at Pekin, the other at Peoria. The bridges also are the property of the appellant.

Defendant is a railroad company of Illinois, and at the time named was the owner of a railroad extending from Pekin to Mazon Bridge, about ninety miles, in the direction of Chicago.

February 1st, 1881, appellant entered into an agreement (Record, page 4) with the Indiana, Bloomington and Western Railway Company; the Wabash, St. Louis and Pacific Railway Company; the Peoria and Jacksonville Railroad Company, and the Peoria, Decatur and Evansville Railroad Company, several parties of the second part to said agreement.

The agreement recites that appellant admits each of the four second parties to full and free use of its grounds, tracks and buildings; further agreeing to maintain and enlarge the same as might be necessary for the full and prompt transaction of the business of themselves and of all other companies whom appellant might at any time admit to a like occupancy as tenants in common with said second parties.

Appellant further agreed to perform for each of said second parties all shifting of cars, making up of trains, loading and unloading of freight, care of passengers, including maintenance of the Union Passenger Depot and generally all terminal services beyond the moving of arriving and departing trains, and to provide men, machinery and supplies required for that purpose.

Each of the second parties agreed to pay to the appellant on monthly settlements a share of the expenses incurred by appellant during the month preceding in the performance of such services and maintenance. The share of each party to be such a proportion of the whole expense as the use made of said terminals by that party bore to the entire use made of the same by all of appellant's tenants in common during the month for which the expense was incurred.

Each of said second parties further agreed to pay monthly to the appellant as owner of said property a rental at the rate of twenty-two thousand five hundred dollars a year.

At the time this agreement was executed, the railroad of defendant company was in charge of and operated by Samuel B. Reed, the Receiver, appointed at the suit of the Farmers' Loan and Trust Company against defendant company in the Circuit Court of the United States for the Northern District of Illinois, by Hon. THOMAS DRUMMOND, Circuit Judge.

Mr. Reed was already running his trains from Pekin to Peoria, using the tracks of the Peoria and Springfield Company between Pekin and Peoria under the agreement with Mr. A. L. Hopkins, Receiver of that company, and obtaining terminal facilities in Peoria from the Wabash, St. Louis and Pacific under an agreement with that company. He was paying to Mr. Hopkins a fixed tariff of $2.50 per loaded car, and to the Wabash Company "certain terminal charges for hand-" ling freight and a proportion of rent of depot, and for handling freight at Peoria" (Record, folios 68 and 80).

The charge in each case, including the entire compen-

sation paid by Mr. Reed to these two companies respectively, covered of course something by way of rental over and above the estimated cost to them of the service.

Both of these arrangements were at the pleasure of the parties, and of necessity ceased February 1st, 1881, when all of the property made use of passed into the control and ownership of appellant, and both of the parties from whom Mr. Reed had been receiving service transferred it to their own terminal business.

Appellant thereupon tendered to Mr. Reed an agreement similar in all respects to that made with each of the four companies—that is, to perform for him all terminal services at cost, and to allow him to run his trains over its tracks between Pekin and Peoria and in and out of its freight and passenger stations in Peoria for a monthly rental at the rate of twenty-two thousand dollars a year, the same as paid by each of the other companies.

Appellant, however, did not insist that the agreement tendered by it to Mr. Reed should be as in the other cases for a term of fifty years, but was content that such agreement should be only for the term of Mr. Reed's continuance as Receiver of the railroad of defendant company.

Mr. Reed, however, claimed that he had no authority as Receiver to execute the contract, as the rest had done, without the sanction of Judge DRUMMOND. In order that the business of his road should not be impeded by summary withdrawal of his entrance into Peoria and use of Peoria terminal facilities, it was agreed with him that he should have all the privileges of the contract pending an application to Judge DRUMMOND

for his sanction, and that Judge DRUMMOND's decision when made should take effect as if given at the first.

Mr. Reed was, however, expressly notified that appellant had no authority to waive the condition that for any time that he might use appellant's premises he must pay rent on the same basis as the others.

Mr. Reed agreed that he would make this application within thirty days from March 1st, 1881, and did make it within that time. Judge DRUMMOND, however, declined to make himself responsible on a question of business judgment, and confined himself to the announcement that unless Mr. Reed paid what was required the appellant could shut him off its tracks. Mr. Reed was notified by the petitioner that Judge DRUMMOND had taken this position and that petitioner would have to shut him off its tracks unless the condition of his occupancy was complied with. He did not comply and was accordingly shut off.

This did not occur until March 1st, 1882, the petition of Mr. Reed having remained meantime in Judge DRUMMOND's hand without action. His response to it at that time seems to have been called out by some application from the appellant (Record, fols. 69 and 72).

At the time when appellant consented that Mr. Reed might continue to use its tracks, pending an application to Judge DRUMMOND for his sanction to the contract, it was not expected that any great delay would intervene. By way of precaution it was, however, stipulated that the car rate formerly paid to Mr. Hopkins, as Receiver, for the use of tracks between Pekin and Peoria should be taken as a basis of *ad interim* payments on account. The additional payments which Mr. Reed had been making to the Wabash Company for terminal facilities

in Peoria were discontinued. These car rate payments were originally intended, as has been said, to cover not merely the charge for services and maintenance, but also to include a charge for rental. Now, that Mr. Reed was to be charged for services only the actual cost, a continuing payment on the car rate basis would of course leave a balance to be applied to rental. This might, however, and probably would, prove to be less than the uniform rental paid by the rest. Hence it was agreed that this difference should *be paid* when Judge DRUMMOND should decide (Record, fols. 74 and 82).

No provision was made binding either party to continue the agreement beyond the time when Judge DRUMMOND should make his award. Appellant, indeed, by the terms of its contract with the four companies, was expressly precluded from admitting a competitor upon less favorable terms, particularly as to rental. This is expressly prescribed by a clause in that contract, which is referred to by Mr. Reed in his petition to Judge DRUMMOND (Record, fol. 107).

Mr. Reed accordingly, in March, 1881, filed his petition in the suit in which he had been appointed as Receiver, setting up his agreement made with appellant "to pay for the terminal services and facilities the "same the lessees pay, the fixed charge per month to "be determined by Judge DRUMMOND," and praying from Judge DRUMMOND a determination of the amount (Record, page 40).

This petition as has been seen remained, with Judge DRUMMOND until early in 1882, at which time he informed Mr. Cohrs, vice-president and general counsel of petitioner, that "he had decided not to act," and that "unless the Receiver of the C., P. & S. W. settled

" with the P. & P. U. Ry. Co. by March 1st, 1882, we " might shut them off our tracks " (Record, fol. 74).

Mr. Reed declined to make the payment which he was then authorized to make. The arrangement with him was accordingly terminated March 1st, 1882, and the defendant company ceased doing business directly with Peoria.

Appellant thereupon filed in the cause in which Mr. Reed was appointed Receiver an intervening petition, setting out what had occurred and asking for an order directing Mr. Reed to pay a balance of rental account for the use of petitioner's premises from February 1, 1881, to March 1, 1882, on the same basis as each of the other companies using the same premises (Record, page 25).

Mr. Reed had used the premises fourteen months. Rental for this period, at $22,500 a year, amounted to $24,375. His share of expenses incurred by petitioner amounted to $8,394.38. His cash payments meantime, made on the basis of his former contract with the Pekin, Lincoln and Decatur Company, were in the aggregate, $17,537.83. Deducting from this sum his share of the expense account, to wit, $8,394.38, there remained to be applied to rental account $8,143.55. Deducting this in turn from the gross amount of accrued rental, to wit, $24,375, there remained due to petitioner, for balance of rental account, $16,231.55.

It was, accordingly, for payment of this sum that the petition asked an order from the Court (Record, fol. 78).

This petition was referred to a Master, with instructions to take proof and report the same, with his conclusions, to the Court.

The Master found "as the result of the conditions "upon which the Receiver continued to use the prop- "erty after the attempted making of a contract be- "tween the parties," * * * "an implied under- "taking on the part of the Receiver," to pay the demand originally made by the petitioner, and now urged by it as appellant. He therefore found that the amount claimed was due (Record, fol. 50).

The answer of the defendant company to the intervening petition of appellant, claimed that it "had done "business into Peoria for many years over the tracks "now owned by the Peoria and Pekin Union (appel- "lant) Railway Company *on the basis of paying per "car;*" that at the date of the demand made by appellant, it was paying $2.50 per car; "*and it claims the right to continue to do business into Peoria at the same rate,*" &c. (Record, fol. 39).

This claim is not made, in the answer, on any basis of alleged contract, nor was any evidence offered in support of it on that basis. It is claimed *as an absolute right*, apparently on that view of supposed rights of one carrier in the property of another, which prevailed in some of the Circuit Courts, and, among them I have reason to think in Judge DRUMMOND'S, before the decision of this Court in the Express cases.

With respect to this claim of absolute right, the Master found that if the Court should be of opinion that appellant's demand for payment of rental created no obligation to discontinue the use or pay the required sum; and if the Court were also of opinion that the rental paid by other tenants furnished no basis of charge against the defendant company, and defendant company should be charged no more than it paid for

the same privileges during the prior time referred to, then the account had been satisfied, and nothing was due to the petitioner.

Concerning certain evidence offered by the defendant company to prove that the amount demanded by the petitioner for rental was unreasonable, the Master reported as follows :

" No testimony has been introduced to show that these terms are unreasonable, except by comparison with what has been previously paid and the amount of business done by the respondent road during this time as compared with that of the other roads referred to " (Record, fol. 49).

Of the insufficiency of this evidence to prove that the rent demanded was unreasonable, he reports :

" There is nothing before me which enables me to report the amount of compensation which the petitioner should have except as the result of the condition upon which the Receiver continued to use the property after the attempted making of a contract between the parties resulting in the contract above referred to " (Record, fol. 50).

The Court adopted the defendant company's theory as presented by its answer, that irrespective of all contracts, it had an absolute right to use the property of the appellant and upon the same basis of payment as previously in use.

Hence, the Court, in its decree (Record, p. 29), states that it is

" of the opinion that there was no obligation on the part of the defendant Railroad Company, from a time when a demand was made upon the defendant Railroad Company by the petitioner for compensation, to pay * * * at the same rates that the other railroad companies referred to in the pleadings and proofs were paying, but the defendant company had the right to

pay for the use of the same according to the rates that it had previously paid for the use of the tracks from Pekin to Peoria and for terminal facilities at the latter point," &c. "And it is therefore ordered and adjudged that the said petition be dismissed with costs, and that the alternative in the Master's Report, in conformity with this opinion, be affirmed" (Record, fols. 54 and 55).

This alternative report of the Master, it will be recalled, was as follows :

If the Court shall be of opinion :

1. That no obligation to pay was involved by continued use after notice that rent would be demanded.

2. That even the agreement to pay rent at a rate to be afterwards determined created no obligation ; and

3. That defendant company could not even then be required to pay except on the same basis as before the property changed hands.

All these positions were adopted by the Court, which held, as has been seen, that the defendant company *had the right* to pay at the same rate as before.

The petition was thereupon dismissed.

The petitioner appealed, and is now here to be heard on its appeal.

Assignment of Errors.

I. The Court erred in holding that there was no obligation on the part of the defendant railroad company to pay from the time of demand made by appellant, at the same rate that other railroad companies were paying.

II. The Court erred in holding that the defendant railroad company had the right, after such demand, to pay at the same rate that it had previously paid for the use of the tracks from Pekin to Peoria and the terminal facilities at the latter point.

III. The Court erred in holding that appellant was not entitled to a decree for any part of the compensation demanded in its petition.

IV. The Court erred in confirming the alternative in the Master's report.

V. The Court erred in not confirming that part of the Master's report which was not confirmed.

ARGUMENT.

I.

There was no agreement whatever as to compensation which survived the acquisition of the property by the Peoria and Pekin Union Railway Company.

The evidence in the record is comprised in two affidavits and the exhibits attached. One of the affidavits is made by John B. Cohrs, vice-president and general counsel of the Peoria and Pekin Union Ry. Co. The other is made by F. E. Hinckley, at one time president and afterwards Receiver of the Chicago, Pekin and Southwestern R. R. Co. Each gives an argumentative history of the case. There is no contradiction between

them as to any positive fact. The exhibits consist mainly of the agreement and lease made with and to the four companies by the appellant, and the various agreements which have from time to time been made by the Chicago, Pekin and Southwestern for the use of terminal facilities in Peoria and for payment for such use.

Both of the gentlemen above named agree in stating that the period covered by this controversy extends from February 1, 1881, to March 1, 1882 (Cohrs, fol. 67; Hinckley, fol. 141). The petition addressed to Judge DRUMMOND by Mr. Reed stated also the same. The answer of defendant company does not merely admit, but states, that appellant was the *owner* of the property for the use of which compensation was demanded.

Both witnesses agree likewise (Cohrs, fol. 68; Hinckley, fol. 141) that immediately prior to February 1, 1881, the defendant was running its trains from Pekin to Peoria over the Peoria and Springfield road, and under an arrangement with Mr. A. L. Hopkins, then Receiver of that road, and that when appellant took over the property the agreement became inoperative (Record, fol. 141).

There is, therefore, no evidence whatever that these agreements or any of them were more than purely temporary, to continue only during the mutual agreement of the parties. Not only is this true, but no claim on behalf of the defendant company was made before the Master of any continuing force inhering in these agreements or in any of them. The claim, on the contrary, is one of absolute right.

Besides this there is shown in the Record, at page 56, a direct lease, dated February 1, 1881, from A. L.

Hopkins, Receiver, to S. B. Reed, Receiver, granting for one year the line over which Mr. Reed was running his trains between Pekin and Peoria with all of its equipment and appurtenances. For this Mr. Reed was to pay $30,000 in money, besides efficiently maintaining and operating the line at his own expense.

The only other reference to this lease which I find in the record is in folio 69. From that I do not learn that this lease ever was delivered or accepted, or that it even presents an agreement which at any time was definitely reached between the parties. Mr. Reed's own petition to Judge DRUMMOND (Record, page 40) definitely shows that it had been abandoned. The evidence further shows that as early probably as March 1st, 1881, the bridge over which this line crossed the Illinois broke down in a way which involved a complete reconstruction, and it was not until after the close of the year that this line could be reopened for traffic. Mr. Reed, however, was entitled under his agreement with appellant to use the other bridge and line and carried his traffic that way (Record, fol. 73).

There was, therefore, not only no evidence of any agreement in force prior to February 1, 1881, under which any right would survive the control assumed by appellant of its properties on that date, and no claim of any such agreement, but there is a distinct showing to the contrary, and not only this, but the privileges and services enjoyed by Mr. Reed related to property and services which were outside the scope of any such agreement.

In the presence of these facts it is not easy to see how the Court reached its conclusion that

"the defendant railroad company *had the right to*

pay for the use of the same according to the rates which it had previously paid for the use of the tracks from Pekin to Peoria and the terminal facilities at the latter point, and the said payment having been made according to said last-named rates, that the petitioner is not entitled to a decree for any part of the compensation demanded in its said petition" (Record, fol. 55).

Indeed, the Receiver himself had agreed to pay at an essentially different rate. The tariff of fixed charges, comprehending both rental and cost of terminal services the amount received under that plan for rental, must of necessity vary with each month according to each variation of the monthly aggregate of the transactions. The Receiver himself, however, as shown by his own petition, had contracted for services on a basis of actual cost, and agreed to pay a "fixed rental." So much of this fixed rental, however, as should prove to be in excess of what he might actually pay on the agreed basis of *ad interim* payments on account, he was to pay only when the sanction of Judge DRUMMOND was obtained. In the face of this agreement the judgment of the Court was that he had the right to pay rental upon a basis which of necessity was variable.

The right, therefore, which the Court has declared to exist is one which exists, if at all, not only without evidence to prove it, but with force enough to override a direct agreement to the contrary by the Receiver.

No theory of such a right occurs to me, except, as intimated in the statement of the case, that theory which prevailed in some of the circuits, and, as I have reason to believe, in this circuit before the decision of this Court in the *express case* that common carriers, in dealing with one another, could "demand as a right what they have heretofore had only as by permission" (*117 U. S., p. 26*).

II.

The Master was right in holding that there was an implied contract to pay rent for the time that appellant's property was made use of by the defendant company, at the rate demanded by appellant.

The Court, as has been seen, does not pass upon this question, but treats the right claimed by the defendant company in its answer, "to do business into Peoria on the basis of paying per car," and "to continue to do business into Peoria at the same rate," as a complete and absolute right.

The agreement made by Mr. Cohrs, acting for appellant, with Mr. Reed, acting for defendant, is stated somewhat differently by those gentleman.

Mr. Cohrs does not think, nor does Mr. Reed intimate, that it was ever reduced to writing.

Mr. Reed says (Record, fol. 82) that it was for "a "fixed charge per month to be determined by Judge "DRUMMOND."

The statement, however, in which this proposition occurs was not intended by Mr. Reid as a precise expression, but only as expressing "in substance" the agreement of the parties. It is, moreover, clearly wrong in the particulars now considered, because the expression above quoted by Mr. Reid is used by him with reference to a *prospective* and not an *ad interim* rental. It was clearly not in contemplation of the parties that a prospective rental to be paid during the receivership should be fixed by Judge DRUMMOND as an individual umpire. The contract between petitioner and the four

companies in its eighth clause (Record, fol. 107) expressly forbade this, and Mr. Reed's own statement, from which is taken the expression now under review (Record, fol. 81), shows that he had this clause in full view. The question agreed to be presented to Judge DRUMMOND was whether he would sanction such a rental as petitioner was able to accept. If he gave his sanction then the contract would be executed and would carry with it, as of course, the payment of a rental from that date at $22,500 a year.

Judge DRUMMOND in fact did give his sanction, but in such a way as threw the responsibility on Mr. Reed, where it appropriately rested. Mr. Reed declined to execute the contract, and thereupon appellant claimed that he should at least pay for the use he had enjoyed at the rate he agreed to pay if Judge DRUMMOND's sanction was obtained.

The testimony of Mr. Cohr is not "in substance," but is full and explicit on these points.

"It was expressly stated in the verbal agreement between Mr. Reed and myself that we had no authority to allow him to use our tracks except upon the terms as were paid by the other lessee roads, viz.: $22,500 per annum for the use of the main tracks, and the terminal charges as specified in the contract. * * * We never agreed that the rental should be fixed upon any wheelage basis, or basis of business done, or that Mr. Reed should pay anything else except the rental fixed by the contract, $22,500 a year, to be paid in monthly payments. * * * The only thing that was submitted to Judge DRUMMOND for his decision was whether Mr. Reed should use our tracks by paying us the fixed rental of $22,500 a year. * * * If they did not want it upon those terms they need not take it, but if they wanted to use, *and used* it, they must pay our price, and upon that theory alone I submitted the case to Judge DRUMMOND upon Mr. Reed's petition, supposing, as no doubt did Mr. Reed, that the Judge

would soon determine that we should have our contract of rental, or that the Chicago, Pekin & Southwestern Railroad should cease using our tracks and property in Peoria and between Peoria and Pekin" (Record, fols. 75, 78 and 77).

It was moreover expressly agreed that the payments *ad interim* should not conclude the appellant, as to how much it should receive for the use *ad interim*, but that if Judge DRUMMOND gave his sanction to the contract rate, "the residue" required to make up that rate from February 1, 1881, should be paid to the appellant whenever the decision was announced (Record, fol. 82).

Judge DRUMMOND'S action was in fact a full authority for the defendant company's Receiver to pay the rent. He did not propose to make himself responsible for either the affirmance or rejection of a business contract, but

"said to me that unless the Receiver of the C. P. & S. W. settled with the P. & P. U. by March 1st, 1882, we might shut them off our tracks. *We gave notice to that effect to Mr. Reed, and he declined to pay.* The C. P. & S. W. was shut off from our tracks" (Record, fol. 74).

It was claimed before the Master by appellant that the conditions under which Mr. Reed continued to use the property of the appellant after tender to him of an agreement for use on the same terms as the rest amounted to a promise on his part to pay rent from the date of the demand at the same rate as the rest, provided he should be authorized by Judge DRUMMOND as fully as was done.

The Master found that this contention was correct (Record, fol. 50). His finding on this head, as has

been seen, was not overruled by the Court, which based its judgment on a wholly different proposition.

The testimony of the parties and their acts are both illustrative. No intermediate terms are within the power of the appellant. The moment these terms were refused, the use was terminated. The question was really not one of terms, but of sharing with others in the terms of a contract already in full force. If Mr. Reed had taken at first the position he took at last, there would have been no controversy.

" We allowed Mr. Reed the use of our tracks under that arrangement as a favor. * * * Mr. Reed claimed that he had no authority, as Receiver, to execute the contract "A," but that he would present a petition to Judge DRUMMOND for his action. * * * If the Judge authorized him to pay the fixed rental, then a contract similar to Exhibit A would be executed to continue during the receivership " (Record, fols. 74 and 75).

The Judge, as has been seen, declined to make himself the sponsor of a business contract, but fully authorized the Receiver, as a business agent, to make it if he saw fit. How then shall it be said on the one hand that " if the Judge authorized him to pay the fixed " rental, then a contract dating back to the demand for " rental would be executed," and yet that there was not an implied promise on his part to pay that rental from that date? The finding of the Master is certainly well sustained.

III.

Aside from the implied promise to pay rent at the same rate as was paid by other companies, the rent demanded from defendant company is both reasonable and just.

It is, perhaps, within judicial knowledge that the system of appellant's charges to its lessee companies is that of substantially all union depot companies. The cost of operation and maintenance is divided in proportion to the use, and a fixed charge, uniform to all companies, is paid by way of rental. One ground of this general acquiescence is obvious. To acquire a given piece of ground for station purposes will presumably cost one railroad company just as much as it will cost another company. The seller will not take less from one company than he will accept from another, out of any regard for the fact that the first company cannot use it to so much advantage as the second. The cost of a switch track, or of right of way for it, is not at all lessened by the fact that but few trains will use it. The same thing is true of almost all those things which may give value to a terminal. Hence, it is that railroad companies everywhere agree to share their terminals, if at all, upon the basis of numerical division of the interest on the cost, and a division of current expenses in proportion to the wheelage.

It is, perhaps, equally obvious that the pioneer company takes all the risk of the expenditure, and has a prior right in consequence to compensation from the business which is reached.

The company that comes afterwards with equal rights, is a competitor upon unequal terms, unless it be required to share equally the burden of original expenditure. That it does but a small business is no answer. The price obtained thereafter for the whole is governed by the fact of competition in the price, not by the size of the competitors. Precisely these considerations have been stated by Judge BREWER with great force.

"The final matter is that of compensation. In this I think the Master erred. He fixed the value of the right of way at a million of dollars, and reported that, in his judgment, the share of the interest on this value, and in the expenses of keeping up the track, which the intervenor company should pay, should be fixed upon a wheelage basis. So far as respects the mere matter of keeping up the track, I see no reason to doubt the justice of the rule fixed by the Master; but, in regard to the interest on the value, I think the intervenor should pay one-half of that and for these reasons: It is a familiar fact that in a large city like St. Louis, along the track of an important railroad, within the city limits, are built large manufacturing establishments, warehouses and other buildings, for the convenient transaction of business between the carrier, on the one hand, and the manufacturer and the merchant, on the other. Another road coming over the same track not only uses the property, of great value, which the company owner has in the first instance paid for, but also shares in the benefit of access to all these manufactories, warehouses, etc. It thus places itself in competition with the original company for this valuable business. Such competition may operate to diminish the business of the original company, or compel it to lower its rates to preserve the business. In either way it operates to the serious detriment of the original company. The new company comes in as an equal competitor. It shares in all the benefits of this business, and it may share equally. Under those circumstances it seems to me no more than fair that a new company, which crowds itself into an equal access to such benefits and privileges, should pay an equal share of the interest on the value of the property. Hence I

shall sustain the objections of the respondent to the report of the master, so far as concerns the amount of compensation and I think that the intervenor company must pay one-half the interest on the value, and its share of the cost of keeping up the track, determined upon a wheelage basis. In other respects the report of the Master will be confirmed."

Central Trust Co. vs. Wabash, St. L. & P. Ry. Co., 29 Federal Rep., 559.

The actual and rightful value of these considerations, their application to the case at bar, is, perhaps, conclusively demonstrated by the action of the other lessee companies in adjusting their own rights. They were very diverse in the length of their respective roads in the scope of mutual competition, and in the use which they made of the facilities enjoyed. They, nevertheless, mutually agreed for themselves upon that basis of payment, which the defendant with much less reason rejects. The Peoria and Jacksonville, for example, is scarcely two-thirds the length of the Chicago, Pekin and Southwestern, and from its position, did not, as that did, compete with the others for through business, upon equal terms. It paid what the other refused. Appellee's refusal, as is shown, is not merely unjust, but is also in the teeth of its own agreement. It is, moreover, grounded upon an allegation of right, which is not only untrue, but already pronounced so by the judgment of this Court.

WAGER SWAYNE,
C. WALTER ARTZ,
For the Appellant.

March 24, '88.—60.

200

127-200

Office Supreme Court U. S.
FILED.
MAR 22 1888
JAMES H. McKENNEY.
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1887.

(No. 210.)

THE PEORIA AND PEKIN UNION RAILWAY COMPANY,
Appellant,

vs.

THE CHICAGO, PEKIN & SOUTHWESTERN RAILROAD COMPANY,
Appellee.

Appeal from the Circuit Court of the United States, Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLEE.

THOMAS S. McCLELLAND,
Counsel for Appellee.

CHICAGO:
HORACE O'DONOGHUE, BRIEF AND ABSTRACT PRINTER, 192 S. JEFFERSON ST.
TELEPHONE 4830.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1887.

(No. 210.)

THE PEORIA AND PEKIN UNION RAILWAY COMPANY,
Appellant,

vs.

THE CHICAGO, PEKIN & SOUTHWESTERN RAILROAD COMPANY,
Appellee.

Appeal from the Circuit Court of the United States, Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLEE.

The appeal in this case was taken from an order entered in the court below, upon an intervening petition filed by appellant in the case of the *Farmers' Loan and Trust Company* v. *Chicago, Pekin and Southwestern R. R. Co.*, a foreclosure proceeding in chancery, wherein appellant claimed $16,231.55 as a balance due from appellee for the use of appellant's tracks between Peoria and Pekin, and terminal facilities at these two points, from February 1, 1881, to March 1, 1882, a period of thirteen (13) months.

Appellant charged $33,769.38 for such use of track and services for the thirteen months; but having received $17,537.83, it seeks to recover $16,231.55 as a balance.

During the entire period of time from February 1, 1881, to March 1, 1882, appellee was in the hands of and its business conducted by S. B. Reed, the receiver appointed by the court in the foreclosure proceedings of the *Farmers' Loan and Trust Company* v. *Chicago, Pekin and Southwestern R. R. Co.*

The court below disallowed the claim and dismissed the intervening petition, and appellant prosecutes its appeal to this court, to have that order reviewed. (*Printed Record, p. 29.*)

To enable this court to determine whether there was error in dismissing the intervening petition by the Circuit Court, a brief statement of the facts will be proper.

On February 1, 1881, there were two lines of railway tracks connecting Peoria and Pekin—one on the east side of the Illinois River, and owned by the Peoria and Springfield Railroad Company, and the other on the west side of the river, owned by the Peoria, Pekin and Jacksonville Railroad Company, Peoria being ten miles north of Pekin and on the opposite side of the Illinois River.

At and before the date last mentioned four (4) railway lines had business connections with Pekin and Peoria; to wit:

Indiana, Bloomington and Western Railway Company.

Peoria, Decatur and Evansville Railway Company.

Wabash, St. Louis and Pacific Railway Company.

Peoria and Jacksonville Railroad Company, all of which seem to have used the two tracks between Peoria and Pekin before referred to, with their terminal facilities.

It also appears that the appellee had used one or the other of these two tracks since 1876, on terms and conditions agreed upon from time to time, paying therefor in full, for the use of track and terminal accommodations,

not to exceed $2.50 for each loaded freight car, and $2 for each passenger and baggage car handled, with no charge for "empties," and a small charge for merchandise handled in warehouse in Peoria, and these were the sums paid on February 1, 1881, by the receiver of appellee. At that date the appellant, which had been organized for the sole purpose of managing and controlling these two short tracks and their terminal accommodations at Peoria and Pekin, and whose entire capital stock was owned by the four (4) railway lines above enumerated, became possessed, by purchase, lease or otherwise, of these two tracks, with their switches and other appurtenances, at Peoria, and on or about the day last mentioned these four railway lines entered into a contract of lease with this newly created corporation, the appellant, so wholly owned and controlled by themselves, whereby these four lines were to have the use of the only connecting tracks between Peoria and Pekin, with their terminal accommodations, upon the terms and conditions fully set out in the contract or lease. For the use of the tracks, each line obligated itself to pay a yearly rental of $22,500, and in addition thereto certain other fixed rates for terminal services, to be apportioned to each line upon the basis of service required or accommodations rendered, or business done by each. (See this lease, "Exhibit A," page 41, printed Record.) By section eight (8) of the mutual covenants entered into between the above four contracting parties with appellant, as shown in "Exhibit A," on page 49 of the printed record, it was stipulated that:

"Any other railroad company, whose road shall now or "hereafter run into said city of Peoria, or that shall desire "to procure an entrance into said city, shall be allowed to "acquire the same rights and privileges as the said several "lessees, but no other, and upon no less rental, upon "entering into a like contract hereto with the party of the "first part" (the appellant herein and lessor in the contract

marked Exhibit A above), "except as to representation "in the board of directors of the party of the first part "and ownership in its capital stock."

It will be seen that the four railway lines mentioned thus had a monopoly of the only railway connections between these two cities of Peoria and Pekin, and while they did not exclude other railway lines from the use of the two connecting tracks, provided they should pay to them or their substitute, the appellant, the large rental of $22,500 per year for use of the tracks, and other local charges at the termini, without regard to the amount of business such other roads might do, yet they did exclude other roads from any participation in the profits of the appellant or a place on its board of directors.

When this combination was fully consummated, to-wit., on February 1, 1881, the appellant demanded of S. B. Reed, the receiver of appellee, acting under the orders and directions of the court in the foreclosure proceedings, that he should enter into a new contract, in accordance with section 8 of its lease, with the other four railway lines above quoted, and to pay the advanced rates of nearly double what the receiver had been paying for over five years and was then paying for the same service, and this the receiver declined to do.

By some sort of a verbal arrangement between the officers of appellant and Reed, receiver of appellee, it was agreed that the receiver should continue to use the connecting lines between Peoria and Pekin, as he had been doing, and that he should submit to the Hon. Thomas Drummond, before whom the above foreclosure proceeding was pending, and whose officer he, the receiver, was, the whole question of rates to be paid by the receiver for the the use of appellant's lines and terminal facilities, which the receiver did in a petition, which is found at page 71 of the printed record, and also at page 40.

This petition was presented to Judge Drummond,

March 8, 1881, as agreed upon with Mr. Cohrs, which Mr. Cohrs avers in his sworn statement, but it was not acted upon by him, except as he may have determined the same, in effect, by the decretal order of November 13, 1883, shown at page 29 of the printed record, and from which this appeal was taken.

Appellee, or strictly, its receiver, S. B. Reed, continued to use appellant's tracks and employ its services up to March 1, 1882, when it ceased doing so, and during the period of thirteen months from February 1, 1881, to March 1, 1882, the receiver continued to pay the maximum rate of $2.50 for freight cars, and $2 for passenger and baggage cars, or in the aggregate $17,537.83, as will be seen by reference to "Exhibit E," at page 76 of the printed record.

But this use was seriously trammeled by restrictions imposed upon the receiver, of which the following is a sample:

On March 31, 1881, the appellant addressed to appellee the following letter:

"PEORIA & PEKIN UNION RAILWAY COMPANY,
"GENERAL MANAGER'S OFFICE,
"PEORIA, ILLINOIS, March 31, 1881.

"*J. Murray, Esq., Supt. Chicago, Pekin & Southwest-*
"*ern R. R.:*

"DEAR SIR—Beginning to-morrow, April 1st, this "company will only furnish room on side-tracks for 25 of "your empty cars of all descriptions.

"This is positively the maximum number of empty "cars that our tracks can accommodate for your company. "Will you, therefore, please arrange to remove all empties "above 25 from Peoria yards and side-tracks at once.

"This number of cars is amply sufficient to cover all "orders for several days ahead, and, in order that we may "have room enough to transact business for all concerned,

"we must insist that this rule be complied with in the "future.

"Our record to-day shows that your company has "67 cars of all kinds on our tracks."

"Very truly,

"R. STEWART,

"*Gen. Manager.*"

(*Printed Record, page 64.*)

This restriction was placed upon appellee by appellant within two months after the date from which appellant is claiming to hold appellee under the terms of a contract of lease made with other and different roads, and the restriction was continued until March 1, 1882, or to the close of the term. Mr. Reed, the receiver of appellee, reports this to his counsel in the following language:

"You will see that another turn on the screws has "been made." (*Page 65.*)

At this time, March 31, 1881, the four (4) confederating roads were enjoying much greater privileges from appellant, notably the Wabash road, which was handling, on an average, 381 cars per day at Peoria. (*Page 64.*)

On July 14, 1881, Judge Drummond not having passed upon the petition filed by the receiver under his verbal arrangement with the appellant, the appellant filed its intervening petition in the foregoing foreclosure proceedings, asking for an allowance of $7,959.18, amount claimed to be due appellant for use of its tracks, etc., to June 1, 1881, which petition was never acted upon by the court, but was abandoned, and any sum then claimed was subsequently incorporated in a supplemental petition, as next hereinafter shown. (*See page 1 Printed Record.*)

On May 24, 1882, appellant filed its supplemental intervening petition, addressed to the Hon. Thomas Drummond, in the original foreclosure suit, asking for an allowance of $16,402.65, which included the amount claimed in the first petition. (*Printed Record, p. 25.*) On

the same day the court referred the matter to a master in chancery, to take proofs and report his conclusions to the court. (*Printed Record, p. 26.*)

On July 20, 1883, the master filed his report, in which he found a balance due appellant of $16,231.55, over and above the $17,537.83 paid on the theory that the receiver was bound by the 8th section of the lease entered into between appellant and the four (4) combining railway lines, which owned and controlled ap pellant, assuming that there was an implied contract, there being no express agreement between appellant and the receiver for the use of appellant's lines from February 1, 1881, to March 1, 1882; concluding his report with a saving clause to the effect that if the court should not adopt this theory, or regard it as correct in law, and that this lease between appellant and the other four (4) railway lines, to which appellee was not a party, furnished no basis of charge between appellant and appellee, and that appellee should be required to pay no more for the same privileges during these thirteen (13) months than it had paid immediately prior to February 1, 1881, then that there was nothing due appellant. (*Printed Record, p. 26.*)

To this report of the master the receiver filed the following exceptions, shown at page 26 of printed record:

1. "The master erred in stating that during the "year 1879 arrangements were made between S. B. Reed, "receiver of respondent road, and the petitioner's road, "when in fact the arrangement referred to was made long "before S. B. Reed was appointed receiver of the Chi- "cago, Pekin and Southwestern Railroad.

2. "The master erred in stating that an arrange- "ment was made between A. L. Hopkins, receiver, and "S. B. Reed, receiver, commencing February 9, 1881, for "the use of the track of the Peoria and Springfield Rail- "road between Peoria and Pekin, when, in fact, the peti-

" tion in this matter asks for payment from February 1,
" 1881, and denies the existence of any contract.

3. " The master erred in not finding that the
" respondent was restricted in the use and enjoyment of
" the same rights and privileges accorded to other roads by
" the Peoria and Pekin Union Railway Company, as is
" shown by the evidence, and as was agreed by the Peoria
" and Pekin Union Railway Company with S. B. Reed,
" receiver, when said Reed was permitted to continue in
" the use of the Peoria and Pekin Union Railway tracks.

4. " The master erred in stating that the receiver
" remaining in the use of the Peoria and Pekin Union Rail-
" way tracks after February 1, 1881, was an implied acqui-
" escence in the terms of the contracts made with the other
" roads, when in fact the receiver continued in the use of
" the Peoria and Pekin Union Railway tracks by an agree-
" ment which is set forth in his petition, and is a part of
" the evidence in this case.

5. " The master erred in finding that there was due
" the petitioner the sum of $16,231.55, or any other sum.

6. " The master erred in not finding on the *quantum*
" *meruit* rule, that the receiver had paid all that the services
" rendered were worth."

A careful inspection discloses the fact that the master founded his report upon the statement and argument of Mr. Cohrs, and wholly ignored the statement and argument of Mr. Hinckley, which was entitled to all the weight and consideration accorded to his opponent's statement.

On November 13, 1883, the court, by its order, sustained the exceptions to the master's report, and dismissed the appellant's petition.

The evidence before the master, upon which he founded his report, and which also constituted the basis for the decree of the court, is novel in its character, but presents few conflicting or contradictory features. It is

shown in the certificate of evidence, commencing at page 34 of the printed record.

Appellant's case consists of a sworn *statement* and *argument* made by Mr. John B. Cohrs, with certain exhibits included within pages 34 and 58 of the printed record.

Appellee's case consists of a sworn *statement* and *argument* by Mr. F. E. Hinckley, with certain exhibits, included within pages 59 and 77 of the printed record.

Except so far as the documentary evidence may aid the court in determining the precise relations which existed between appellant and appellee, or its receiver, it cannot be said that appellant sustained the issues on its part by any preponderance of evidence, and the documentary evidence certainly can not sustain the theory that there was any express or implied contract binding appellee for a greater sum than it has paid appellant.

Points and Authorities.

1.

A receiver appointed by a court is the officer of the court, and has no discretionary power to make any important contract touching the management of the property under his charge, except by the order of the court appointing him. The property is in the custody of the court. Therefore, any stipulation or agreement, verbal or otherwise, entered into by Reed, receiver of appellee, with the appellant, beyond the agreement to petition Judge Drummond for directions in the premises, was wholly nugatory. This stipulation to pay the same terminal charges, if made at all, was made between Mr. Cohrs, general counsel for appellant, and the court's receiver, and its legal effect fully known by appellant. (Sworn statement of John B. Cohrs, page 38.)

Hooper v. *Winston, trustee, etc.*, 25 Ill. 353.
Atty. Genl. v. *Vigor*, 11 Vesey, 563.
Waters v. *Taylor*, 15 Ibid, 25.
Verplanck v. *Mercantile Ins. Co.* 2 Paige's Ch. R. 452.
In re Van Allen, 37 Barb. 225.
In re Globe Ins. Co. 6 Paige, 102.
Lehigh C. & N. Co. v. *Central R. Co.*, 35 N. J.
Yeager v. *Wallace*, 44 Penn. St. 296.
Grant v. *City of Davenport*, 18 Iowa, 198.

2.

There was no express or implied contract between appellant and appellee for the payment by appellee, or its receiver, to appellant, the sums stipulated to be paid by the four (4) confederating roads to appellant, as embodied in the lease marked " Exhibit A " to Mr. Cohr's statement, shown on page 41.

3.

There was a tacit understanding between the appellant and the receiver of appellee, as shown by the petition of the receiver, appearing at pages 40 and 71 of the printed record, that Judge Drummond should determine the rights of the parties as to the fixed monthly charge for rental of the appellant's lines, the appellee to pay for terminal facilities and services the same that was paid by the lessees under the lease, (" Exhibit A " to Cohr's statement;) and although Judge Drummond did not do so in the manner contemplated by the parties, he did, in fact, fix the rental by his decree of November 13, 1883.

4.

By this verbal agreement between the parties, as incorporated in the receiver's petition to the court, it was stipulated that appellee should pay to appellant the same charges it had been paying for the use of these lines and

terminal accommodations until Judge Drummond should determine the issues, which he did by his decree of November 13, 1883, the court therein having determined that there was no obligation on the part of the appellee to pay for the use of appellant's lines, etc., the same rates stipulated to be be paid by the lessees under the lease referred to; but that the receiver of appellee fully discharged its obligations by paying the sum which he had paid hitherto for the same or like services. Therefore the intention of the parties was carried out, and that decree should be affirmed.

5.

Assuming that by the demand made by the appellant upon appellee to pay the same charges as the other four roads, under section eight of the lease referred to, the appellee became bound to pay those charges, or cease using appellant's lines, that contract or obligation could not be enforced, because the appellant restricted appellee in the use of its side-tracks, in violation of any supposed implied legal obligation resting upon appellee, as shown by the communication from the appellant to appellee at page 64 of the record, and by such restriction would violate any supposed obligation and relegate the parties to what would be a reasonable charge for use of track and services of appellant.

6.

There being neither an express or implied contract existing between the appellee and appellant for the use of its lines, etc., from February 1, 1881, to March 1, 1882, its measure of damages would be upon the *quantum meruit*, unless the rule laid down by the Supreme Court of Illinois, fixing rent at previous rate, as of a holding over, should control. No direct or positive proof was introduced showing what the use of appellant's lines, etc., were reasonably worth to appellee during that thirteen months, except by comparison with charges made by

other roads for similar services; but it is undisputed that $17,537.83 was actually paid, on the basis of the highest rates ever before paid by appellee for even greater accommodations on the same line; and from Mr. Hinckley's sworn statement, at page 61, it appears that the earnings of the appellee from the business interchanged with appellant during the thirteen months was only $62,652.82. It would seem to an ordinary mind that the amount paid for the use of the tracks, services, etc., being over one-quarter of the gross earnings, was an exceedingly liberal amount, which, taken in connection with the finding of the court below, must be conclusive. Mr. Hinckley also shows in his testimony, pages 62 and 63, that the receiver paid appellant largely in excess of what other roads charged or received for like use of tracks and services.

Sedgwick on Damages, 254 [231].

7.

To exact $33,769.38 from appellee for thirteen months' use of appellant's road, out of the gross earnings of $62,652.82 during the same period, would be unconscionable, and will not be tolerated in a court of justice, and this would have been the practical result if the prayer of appellant's intervening petition had been allowed by the court.

8.

The compensation due the appellant for the use of its tracks, etc., was the sum theretofore paid, as a holding over, with consent of owner, and appellant having continued to acquiesce in such use and services enjoyed by appellee, it must remain satisfied with the rate which it received and which was found by the learned chancellor in the court below to have been fully adequate.

Clapp et al. v. *Noble*, 84 Ill. 62.

Galloway v. *Kerby*, 9 Bradwell, 501.

Prickett v. *Ritter*, 16 Ill. 96.
McKinney v. *Peck*, 28 Ill. 174.
Otto v. *Jackson*, 35 Ill. 349.

9.

Appellee being in the hands of a receiver at the time the obligation, if any, was contracted, and the debt, in fact, having been created by the receiver, a rule against him, as receiver, should have been asked, and not against the insolvent railway, which was subsequently sold in the foreclosure proceeding. Appellant not having applied for or procured a *supersedeas*, on taking its appeal, no obligations rested upon the court, or its receiver, to reserve any funds to meet this supposed claim of appellant.

ARGUMENT.

On the first day of February, 1881, the following condition of things existed relating to the parties to this controversy.

First—Appellee was, and for some time past had been, in the hands of a receiver (S. B. Reed), acting under the orders and directions of the Circuit Court of the United States for the Northern District of Illinois.

Second—Under such receiver, appellee was, and had been for some time prior thereto, occupying and using the Peoria and Springfield Railroad tracks between Pekin and Peoria, with all the terminal facilities at each of those points, at a stipulated rental of $2.50 for each freight and $2 for each passenger and baggage car, with some slight charges for warehouse service and miscellaneous items of minor importance, where such service was required.

Third—This Peoria and Springfield road was also in the hands of and operated by a receiver, Mr. A. L. Hopkins, and Mr. Reed, receiver of appellee, was occu-

pying and using the tracks of this road, under a lease from Mr. Hopkins, on and before February 1, 1881.

Fourth—On the opposite side of the Illinois River, and connecting the two cities of Peoria and Pekin, was another road, known as the Peoria, Pekin and Jacksonville Railroad, and these two roads seem to have been the only lines of railway connecting these cities.

Fifth—Besides appellee, four other railroad corporations used and occupied one or both of these two connecting lines between Peoria and Pekin, with their terminal accommodations, to wit:

1. Wabash, St. Louis and Pacific Railway Company.
2. Indiana, Bloomington and Western Railway Company.
3. Peoria, Decatur and Evansville Railway Company.
4. Peoria and Jacksonville Railroad Company.

Sixth—For the purpose of controlling these two connecting lines and their terminal facilities, these four lines of railway combined to organize a fifth corporation, the Peoria and Pekin Railway Company, they holding the entire capital stock of the new corporation, which, by purchase, lease or otherwise, became the owner of and controlled the two connecting lines between Pekin and Peoria.

Seventh—The four roads mentioned, so owning and controlling the capital stock of appellant, entered into a contract with appellant, whereby they agreed to pay to appellant $22,500 each, per year, rental for the use of these connecting lines, irrespective of the amount of business done by each, and certain *pro rata* terminal charges, according to the amount of business done by each, the lease covering a period of *fifty* years.

By one clause, or division of this contract, numbered eight, it was provided that other roads might be let in to use these connecting tracks and terminal facilities, upon

the same terms and conditions with the four contracting roads, as to payment of rental for use of tracks and terminal accommodations, but nothing further; and no other road, except the four mentioned, could participate in the profits or dividends which might be paid by the appellant, and no distinction was made in favor of a road doing a light business over a road doing a heavy business.

Eighth—The objects herein set forth having been fully accomplished by and between appellant and its four sole stockholders, the four confederating roads mentioned, it, the appellant, made a demand upon the receiver of appellee, S. B. Reed, to enter into an obligation to pay $22,500 per year for the use of tracks and a further sum for terminal charges, in accordance with section eight of its contract, or lease, with the four roads designated, which the receiver declined to do. First: Because he was then paying all his company could bear for the use of these tracks, and all such use was reasonably worth; and, second: Because, being an officer of the court, and acting under its directions, his discretion was limited, and he could not enter into such a contract without leave of court first had and obtained.

Ninth—By a verbal arrangement with appellant the receiver of appellee was permitted to continue in the use of the track connection between Pekin and Peoria, with terminal accommodations, and pay therefor the same rates he had been paying until such a time as his Honor, Judge Drummond, under whom the receiver of appellee was acting, should determine and fix the charges to be paid by the receiver to appellant, and for that purpose the receiver was to file a petition before Judge Drummond, which he did, but that petition in form was never passed upon, but another petition for the same object was filed May 24, 1882, as shown at page 25 of the record, and finally acted upon by this court.

The receiver of appellee continued to use the lines

between Peoria and Pekin until March 1, 1882, a period of thirteen months, when he ceased to use the same, paying therefor the car charges in the verbal arrangement last specified, or, in the aggregate, $17,537.83; and declining to pay more, the appellant filed its intervening petition before Judge DRUMMOND, in the cause wherein the receiver of appellee was appointed and acting, but against appellee itself, and not the receiver, asking for an allowance of a further sum of $16,231.55, which would bring the rates for rental and service up to the figures paid by each of the four proprietary lines; but this claim or demand the court, Judge DRUMMOND, refused, and from such order of refusal this appeal is prayed.

For the purposes of determining the rights of the parties to this appeal, it does not seem necessary to particularly inquire into the questions at issue between appellee and the bondholders, who were seeking in the original foreclosure proceeding to realize on their securities by a foreclosure of their mortgages upon the property and franchises of appellee, further than to remark that the record discloses the fact that a foreclosure and sale was actually made under the second mortgage, and also a decree in foreclosure subsequently entered upon the first mortgage; and it is not a violent presumption that one or both of these foreclosures have ripened into deeds of conveyance, whereby appellee has become divested of its property in the railroad, the receiver discharged, and the proceedings closed; in which event, appellant not having asked for or obtained a supersedeas, which alone would have operated to have held a sufficient sum to cover any supposed demand appellant might have against appellee as a charge against the receiver, a reversal of the final order in the court below would prove a barren victory to appellant.

But conceding that appellant is entitled to a decision of this court upon its rights to recover a further sum of $16,231.55, over and above the sum of $17,537.83, which

it has already been paid for the use of its road and terminal accommodations at Peoria, from February 1, 1881, to March 1, 1882, a perfect understanding of the facts, as disclosed by the record, must satisfy this court that the court below meted out exact justice between the parties by its final order of November 13, 1883, and that the master was wrong in his findings and conclusions.

Three questions would seem to cover the whole controversy:

First—Was there a contract, express or implied, binding appellee, or its receiver, to pay appellant the same rentals for the use of its tracks and terminal facilities at Peoria as was stipulated to be paid to it by each of the four (4) confederating roads, by virtue of the terms and conditions of the lease entered into between appellant and those four roads?

Second—If any contract whatever existed between the parties, was it not embodied in the verbal arrangement entered into between appellant and the receiver of appellee, and incorporated in the petition presented by the receiver to Judge DRUMMOND, asking him to determine the question and direct the receiver in the premises; and was not the final decision of Judge DRUMMOND, manifested by his decree of November 13, 1883, conclusive upon appellant, both as matter of law and by the agreement of the parties? And,

Third—Has not appellant been already adequately paid by the receiver of appellee for the use of its tracks and other accommodations during those thirteen months?

The master was of the opinion, that inasmuch as appellant gave notice to the receiver of appellee of the contract of lease made with the four proprietary roads, especially as to the yearly rental to be paid, and made a demand on the receiver to execute a similar contract of lease, and that the receiver refused to execute such a lease, but continued to occupy and use the tracks of appellant,

there was an implied contract to pay the sums provided for in the lease referred to, and he so found and reported to the court. So strange a proposition is hardly susceptible of serious argument. If the positive refusal of the receiver to acquiesce in what appeared to him to be an unjust demand was not sufficient to rebut any such conclusion, the subsequent acts of the parties themselves negatived any idea of that kind.

I refer to the verbal arrangement entered into between Mr. Cohrs, counsel and vice-president of the appellant corporation, and Mr. Reed, in which the subject was submitted to Judge DRUMMOND for his ruling, as ultimately binding the parties. That arrangement is admitted and made a part of the evidence by both parties in the presentation of their respective cases.

It is true that that agreement (if the receiver could be possibly bound by it, which I deny, because the receiver had no power, or authority, to stipulate for the payment of any specific sum, except by order of the court appointing him) fixed the charges to be paid by appellee, "for "the terminal services and facilities, the same the lessees "pay," referring to the lessees in the lease made between appellant and the four railroads named therein, and only the fixed charges for rental was to be settled by Judge Drummond, and that Judge Drummond ignored the terms and conditions of the submission, and found that the prior rates which had been paid by the receiver to Mr. Hopkins, as receiver of the Peoria and Springfield Railroad, was the true and proper criterion, or measure, of compensation to be paid.

But was not the final determination of Judge Drummond a substantial compliance with the agreement for submission? The agreement, or arrangement itself, provided that "until such determination the Chicago, Pekin "and Southwestern Railway Company to pay charges as

" now made; residue, *if any*, to be paid when Judge " Drummond shall so determine."

By this stipulation to submit the matter to the court two elements of charge only were contemplated, to wit, " terminal facilities," attempted to be settled by the parties themselves, and the " fixed rental *per* month," to be determined by the court; yet counsel for appellant in the court below, in his sworn statement, seeks to apply, out of the $17,537.83 in gross paid by appellee, $5,318.80 for switching and $3,433.37 for maintenance, shown at page 39 of the printed record, both of which items would naturally apply to " use of track," and the master ratified this application.

The rates agreed to be paid by the four (4) proprietary roads, for use of tracks and terminal accommodations of appellant, ought not to bind appellee, because they themselves owning all the stock, and absolutely controlling appellant, the contract was nothing more nor less than an agreement made by themselves with themselves, and a palpable fraud upon appellee, which was enjoying the privileges of one of the connecting tracks through its receiver at the very time the combination was made; and there being then in existence a traffic contract between two receivers of the same court, it may well be doubted whether one receiver could alienate his property in such a way as to enable the other receiver to be harassed or oppressed by a third party acquiring title to such property.

Certain it is that the infallable rule prevailing in courts of equity, that those who invoke the aid of that court must come in with clean hands and do equity, will forbid appellant from demanding and receiving from appellee $24,375, for thirteen months' use of this track, running over the track only 9,853 cars of all kinds, when that was the maximum rental exacted from the Wabash, St. Louis and Pacific Railway Company, which ran 127,431 cars over the same track during the same period, and

under a lease running for fifty years, and especially when the Wabash road is in fact the power behind the throne which claims this additional sum, by reason of its large proprietary interest in the management of the appellant corporation, especially when there was not an express contract binding on appellee or its receiver.

It would seem that the entire earnings of the appellee during the thirteen months from February 1, 1881, until March 1, 1882, arising from business interchanged with appellant, was but $62,652.82; so that when it paid to appellant $17,537.83 for use of its tracks, etc., there could have been little or no profit to the estate of the receiver, which both he and the court were bound to preserve for the benefit of creditors and stockholders.

The court will observe that the appellee railroad extended from Joliet, near Chicago, to Pekin, south of and beyond Peoria. Pekin was the terminus of appellee's road, and to have a connection with Peoria was not indispensable to the operation of appellee as a railroad; and the court below and its receiver would not have been justified in maintaining the expense of keeping up the Peoria connection if it tended to diminish the assets of the main road and reduce the securities of the bondholders; and inasmuch as appellant permitted the use of its tracks by the court, and, from the authorities cited in my brief, the possession of the Chicago, Pekin and Southwestern Railroad was the possession of the court, it was bound to know that the court could not and would not permit a waste of its assets by the payment of extortionate rentals, and must be content with what it has received, that sum being over one-fourth of the gross earnings of appellee.

On the question as to whether or not appellant received all its use of track and terminal services were reasonably worth, reference is had to the testimony of Mr. Hinckley, on pages 62 and 63 of the printed record, if charges made by other roads for like services can be any

proper criterion by which the court could fix the charges in this case.

It will be borne in mind that the distance from Peoria to Pekin is ten miles; that the receiver furnished his own engines, engineers, conductors, brakemen and other employes, and paid $2.50 for every freight, and $2 for each passenger and baggage car which passed over the track.

In contrast to this, the Chicago, Burlington and Quincy Railroad Company furnished track, engines and men to operate the trains and handle loaded cars from Aurora to Chicago, a distance of thirty-eight miles, for $1.25 per car.

The Chicago and Iowa Railroad Company hauled the same cars eighty miles for $3.75 per car, furnishing track, engines, engineers and all necessary trainmen.

Referring to the testimony of Mr. Coles, at page 36 of the printed record, it will be seen that during the thirteen months from February 1, 1881, to March 1, 1882, the receiver handled 9,853 cars, all told, on appellant's road. During the same period of time the Wabash, St. Louis and Pacific Railway Company handled 127,431 cars, for which it only had to pay $24,375, or nineteen (19) cents per car, to appellant.

By this intervening petition appellant demands the rental from appellee of $24,375, or $2.48 per car, besides large sums for maintenance of track and switching charges.

This comparison of rates charged by appellant for use of its road by competing lines more forcibly illustrates the unfairness of its present claim than a comparison of its claim with charges made by other roads for similar use and service.

That this monopoly could have forced the receiver to pay its demands by requiring him to enter into a positive contract to do so or cease using its tracks, may not be disputed; but having consented to furnish track and terminal services, for a stipulated price theretofore paid, and having

received that price in full, relying upon an arbiter in the person of the court to allow it a larger compensation, and that arbiter having determined the issue, which was based wholly upon the facts and circumstances surrounding the case, of which the court was peculiarly cognizant, and also being in a large measure within the sound discretion of the court, irrespective of the terms of submission, it is difficult to see upon what appellant relies for a reversal.

This is clearly a case of holding over on the part of appellee with the consent of appellant, and the courts of Illinois have settled the rights of landlord and tenant under such circumstances, and I think all other views of the case may be eliminated.

That appellant notified the receiver of appellee of an advanced rate for rent after February 1, 1881, is true, but that the receiver flatly refused to pay such advance is equally true.

A notice by a landlord to a tenant, that if he continues to occupy the premises beyond a fixed period he must pay an increased rent, naming the same, will not bind the tenant, though he holds over, unless the tenant consents to such increase of rent.

Galloway v. *Kerby*, 9 Bradwell, 501, and *Clapp et al.* v. *Noble*, 84 Ill. 62, and other cases cited herein, fixes the liability of the tenant to pay the same rent as under the previous leasing.

The court will also note that from the time the appellant entered into the ownership or control of the Peoria and Springfield and the Peoria, Pekin and Jacksonville tracks from Peoria to Pekin, it curtailed the receiver of appellee in his free and full enjoyment of those tracks. The specific restriction set out in the record was in the limitation of the number of cars which might stand upon the side-tracks at Peoria, but others are referred to by Mr. Reed when communicating this particular restriction to his counsel on or about March 31, 1881. If the

unlimited use of these side-tracks for temporary storage of empty cars was one of the conditions of a lease which appellant would force upon appellee, then the violation of its terms by appellant would be such a breach of contract on the part of appellant as would release appellee from a strict enforcement of its obligations, if any existed. I respectfully refer to the reasons assigned by the late Lorin Grant Pratt, Esq., counsel for S. B. Reed, receiver, etc., found at page 73 of the record, addressed to the Honorable Thomas Drummond, why that judge should not grant the prayer of appellant's petition. Also to the statement of fact made by Mr. F. E. Hinckley, who was intimately acquainted with the C., P. & S. W. R. R. Co., and its operations from the time it was chartered, and eminently qualified to furnish data relative to the road, and grounds for argument why appellant should not be paid more than it has already received.

To enable the court to see the topographical relations which these several roads bear to each other and to the two cities of Pekin and Peoria, I have appended hereto a diagram showing these various railroad lines and the cities named.

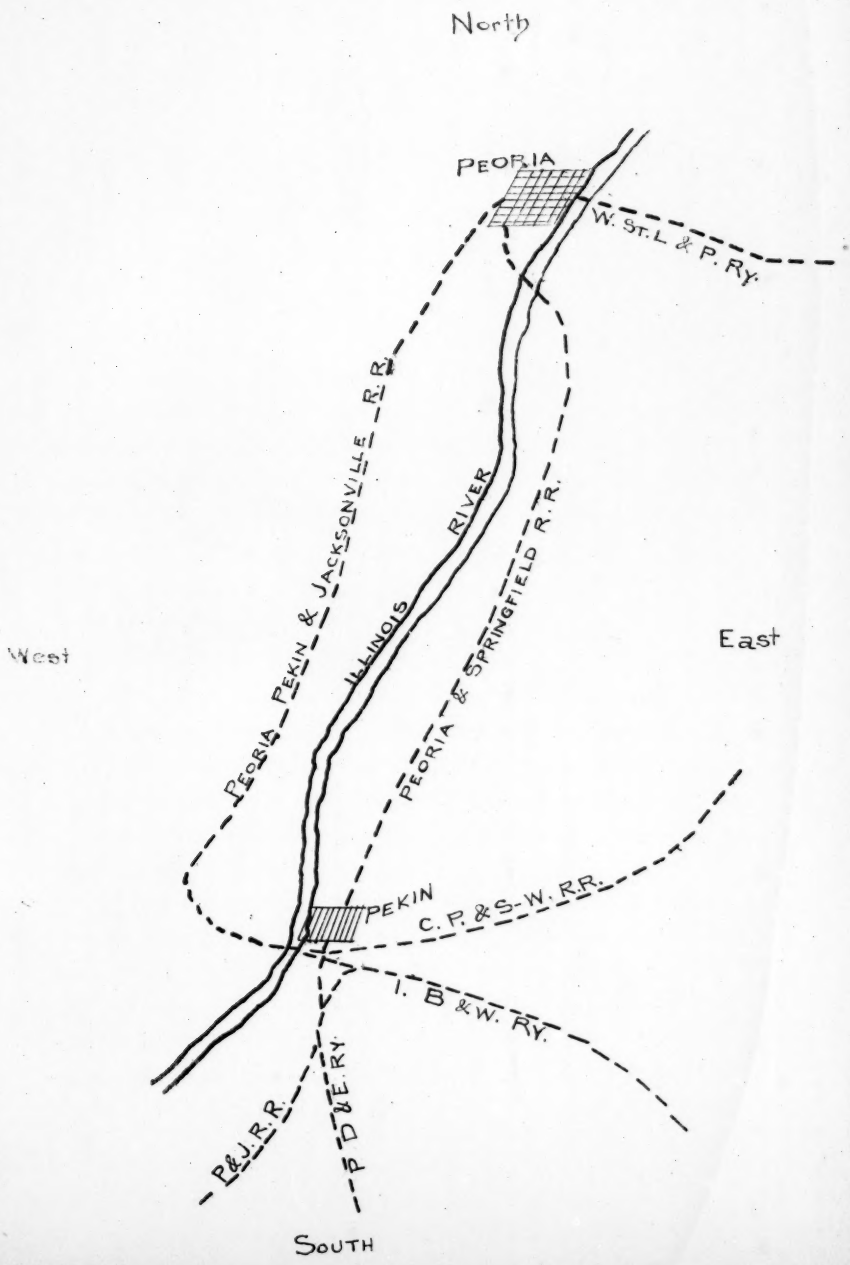
Without entering upon a discussion of the law questions presented by the record, I respectfully refer to the authorities cited in my brief.

Relying upon the equitable disposition of the case made by the Circuit Court in its dismissal of the intervening petition, the case is submitted.

THOMAS S. MCCLELLAND,

Counsel for Appellee.

[SEE MAP NEXT PAGE.]


North
PEORIA
W. ST. L. & P. RY.
PEORIA-PEKIN & JACKSONVILLE R.R.
ILLINOIS RIVER
PEORIA & SPRINGFIELD R.R.
West
East
PEKIN
C. P. & S. W. R.R.
I. B. & W. RY.
P. D. & E. RY.
P. & J. R.R.
SOUTH

37-200

Office Supreme Court, U. S.
FILED
APR 5 1888
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1887.

No. 210.

THE PEORIA AND PEKIN UNION RAILWAY CO., APPELLANT,

vs.

THE CHICAGO, PEKIN AND SOUTHWESTERN RAILROAD CO., APPELLEE.

ADDITIONAL BRIEF FOR APPELLEE.

When the former brief for appellee was prepared the appellant's argument was not at hand, and appellee files this supplemental brief in order to call attention to an error in fact which inadvertently, no doubt, has crept into appellant's argument.

At pages 12 and 13 counsel for appellant makes the statement that on February 1, 1881, the receiver of appellee had a subsisting contract of lease with Mr. Hopkins for the use of the east line between Peoria and Pekin, at a rental of $30,000, besides keeping the road in repair, and reference is made to page 56 of the printed record. There appears at that page a lease, but it is the lease of Mr. Hopkins to the

appellee and the road was to be used by the four contracting roads, as well as other roads which might be let in, upon such terms as the appellant might be able to exact.

The highest amount ever paid by appellee was $2.50 for each freight and $2.00 for each passenger car run over the track, as we have been shown, and that rate was, in fact, paid up to March 1, 1882, when appellee ceased using the line.

The reference to this lease affords a ground for argument that if the appellee secured the full control and use of this line for $30,000, to be used by all the four combining roads, the amount paid by appellee, the fifth road using the track, being over one-half the full sum for the entire rental, was largely in excess of its proportionate share, basing the amount it should pay upon an equitable adjustment of the rents to be paid Mr. Hopkins by the five roads.

Counsel lay much stress upon the report of the master and quote from the report to show that that officer took a more logical view of the case than the court. The master's error consisted in assuming that there was an implied contract between appellant and Receiver Reed, whereas Reed had positively refused to make a contract or pay any greater sum than he was paying without direction from the court appointing him. This is clear upon every page of the record.

If there was any contract it was embodied in the arrangement for submission to Judge Drummond, as the terms of that submission can only be construed into meaning one thing, to wit, that the receiver might continue in the use of the track upon the same terms and conditions as formerly, in full, unless the court should direct a new arrangement in conformity with the demands of appellee, which, in the end, the court declined to do.

It seems to me the only question in this case is one of fact and not reviewable. The lower court being on the ground and having personal cognizance of the facts, the relations of the parties, and the surrounding circumstances, its judgment will be deferred to, certainly, unless it is apparent great injustice has been done appellant.

The record shows that there has been, from time to time, a gradual increase of rental exacted from appellee for use of this short piece of track from 1876 to February 1, 1881, at which time it had reached the maximum and all appellee could bear, so that to double that rate, as was sought to be done by appellant, was a practical denial to appellee of the use of the road, as the result proves.

Counsel cite a ruling from Judge Brewer to sustain their attitude in this case. I see no similarity in the facts of that case and the facts in the case at bar. In that case it would seem that there was competition in business and each road was striving to control the carrying traffic in the same territory.

In the case at bar there was no element of this kind.

Without a positive contract or an implied contract, and had there been no previous leasing, the measure of damages would undoubtedly be upon the *quantum meruit*, and, evidently, the court below looked at the matter as a question of fairness between the parties.

It was evident that appellant, being so under the control of the four combining lines of road, was merely their creature; and while these four roads, although of unequal length, agreed to pay the same rental, they themselves became the beneficiaries of such rentals, upon terms, no doubt, fair and just as between themselves, and had they offered